# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~406.~~ 191

BARBARA E. HUME AND AMANDA EUGENIA CROSBY

vs.

MARY D. BEALE, EXECUTRIX OF ROBERT BEALE, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

**FILED NOVEMBER 27, 1871.**

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*Original bill.—Filed April 22, 1867.*

1 In the supreme court of the District of Columbia.

BARBARA ELLEN HUME & AMANDA EUGENIE Crosby
*vs.*
MARY D. BEALE, EXECUTRIX OF ROBERT Beale, dec'd, & others.
} 919. Equity docket 8.

To the honorable justices of the supreme court for the District of Columbia, in chancery sitting:

Humbly complaining, sheweth unto your honors, your oratrixes, Barbara Ellen Hume and Amanda Eugenie Crosby, that they are grandchildren of the late Benjamin Berry, deceased, of Prince George's County, and State of Maryland; that their said grandfather, Benjamin Berry, on the day of , 1826, made and executed his certain deed of trust, which was duly acknowledged by the said Benjamin Berry, the grantor, and admitted to record in liber A B No. 4, folio 189, &c., in one of the land-record books of Prince George's
2 County, State of Maryland, an official copy of which is herewith filed as part of this bill, and marked A, by which deed it will be seen that the grantor, Benjamin Berry, granted and conveyed to the said Beal a large amount of property, real, personal, and mixed, in trust for the following persons named in said deed, to wit: "Eleanor Berry, the daughter-in-law of said Benjamin Berry, Barbara Ellen Berry, Amanda Eugenie Berry, and Rus'ia Rosalie Berry, the three last-named persons being children of the said Eleanor Berry and grand-children of the said Benjamin Berry—the said Eleanor Berry, Barbara Ellen Berry, Amanda Eugenie Berry, and Russia Rosalie Berry, constituting the third party mentioned in said deed of trust.

The said Russia Rosalie Berry departed this life on the 24th day of May, 1860, and leaving no children, never having married. On
3 the 26th day of February, 1833, the said Barbara Ellen Berry intermarried with Ebenezer I. Hume, of Nashville, Tennessee, who died on the 14th day of September, 1842. On the 22d day of November, 1844, the said Amanda Eugenie Berry intermarried with one Edward R. Crosby, who departed this life in September, 1857. The said Eleanor Berry intermarried with one Enos D. Ferguson, jr., of Prince George's County, and State of Maryland, in the year 1843. She departed this life on the 2d day of January, 1857.

Your oratrixes, Barbara Ellen Hume and Amanda Eugenie Crosby, allege that the said Robert Beale accepted said deed of trust, according to its terms, and took upon himself all the duties, responsibilities, and obligations which said deed imposed. That said Robert Beale, by the terms of said deed, was invested with the legal title to all the property conveyed thereby, during the life or widowhood of said Eleanor Berry, but at her death or marriage, and the arrival at full
4 age or marriage of the eldest children, then the said Robert Beale was to convey the unconditional title in fee to all the property, both real and personal, to the said children and their heirs, or such of them as might be living at the time of the conveyance.

That by virtue of said deed of trust a large amount of property came to the hands of the said Robert Beale, a part of which property is set forth in a list or schedule appended to said deed of trust, is hereby referred to and made part of this bill. A large amount of property came

to the hands of the said Robert Beale in addition to that set forth in said schedule, consisting of negroes, horses, cattle, hogs, sheep, farming utensils, and other things, a correct list of which it is impossible to exhibit now to the court, inasmuch as the said Robert Beale, never having made any settlement of his said trusteeship, nor rendered any
5 account of said property, but sold and disposed of the same from time to time and converted the proceeds thereof to his own use, and delayed a settlement with your oratrixes from time to time, by fair but false and fraudulent representations of his inability to pay them, but always promising to do so at a future time.

Your oratrixes allege that they are the only surviving persons of the said third party named in said deed of trust, and that they alone are entitled to the entire proceeds of the property secured by said deed of trust. That the said Enos D. Ferguson, when the late war broke out, entered the military service of the United States and is supposed to be dead, never having been heard from since he entered the Army, in the early part of the war.

That the said Eleanor Berry, in her life-time, invested large amount of the proceeds of said trust property in houses and lots of land within the corporate limits of the city of Washington, D. C., which the
6 said Robert Beale afterwards sold, and put the proceeds thereof into his own pocket, and never accounted to your complainants for any part thereof. That the said Robert Beale invested large amounts of the proceeds of said trust property in real estate in the said city of Washington, and afterwards sold the same at large advances and never accounted for the proceeds, or any part thereof to your oratrixes, or any one of them.

That the said Robert Beale suffered and permitted and advised the said Eleanor Berry, in her life-time, to sell, waste, and squander the said trust property, in order that he might avail himself of the said Eleanor's conduct to shield him from responsibility. Your oratrixes charge that the said Robert Beale, for many years before his death and up to the time of his death, promised and continued to promise them a settlement of his said trusteeship, never denying that he was largely indebted to the... But the purpose and intent of the said Rob-
7 ert Beale, as your oratrixes now verily believe, all the time was to procrastinate and delay them, until he could shield himself from liability under the statute of limitations, or from lapse of time. The said Robert being the brother-in-law of your complainants, having married their half-sister, took advantage of that relationship, to abuse the confidence which it naturally tended to inspire, and to turn the same to his own pecuniary interest and advantage.

They charge that the estate of said Robert Beale is justly indebted to them at least fifty thousand dollars.

That the said Robert Beale departed this life in November, 1866, after having made and published his last will and testament in which his daughter, Mary D. Beale, was appointed his executrix, and has duly qualified as such.

They make the said Mary D. Beale, executrix as aforesaid, defendant to this bill, and call upon her to answer on her oath all and
8 singular the allegations of this bill as fully as if the same and each were repeated by way of interrogatory.

They pray that your honorable court will decree and order a settlement of said trusteeship upon such principles and in such manner as may be consistent with the merits, justice, and equity of their case. They pray for process against the said defendant, and for all such other and

further relief as their case require and to equity belongs, and, as in duty bound, will ever pray, &c.

HUGHES, DENVER & PECK,
*Atto's for Pl'ffs.*

*Exhibit "A" to bill.—Deed of trust.—Filed April 22, 1867.*

This indenture, made this fourteenth day of March, in the year of our Lord one thousand eight hundred and twenty-six, between Benjamin Berry, of Prince George's County, in the Commonwealth of Maryland, of the first part, and Robert Beale, of the city of Washing-
9 ton, and District of Columbia, of the second part, and Eleanor Berry, the daughter-in-law of the said Benjamin Berry and Barbara Ellen Berry, Amanda Eugenie Berry, and Rusia Rosalia, daughters of the said Eleanor Berry, and grandchildren of the said Benjamin Berry, all of Prince George's County, and Commonwealth of Maryland, of the third part, witnesseth—

That whereas the said Benjamin is anxious to provide for the support and maintenance of his said daughter-in-law and his said grandchildren (for which they are dependent on him, the said Benjamin Berry,) that is to say, for his said daughter-in-law, so long as she shall remain a widow and unmarried, and for his said grandchildren and their heirs forever:

Now this indenture witnesseth for and in consideration of the premises and of the natural love and affection which the said Benjamin Berry feels for the parties of the third part, as well as for the further consideration of five dollars, current money of the United States,
10 to him in hand paid by the said Robert Beale, the receipt whereof is hereby acknowledged, he, the said Benjamin Berry, hath given, granted, bargained and sold, aliened, enfeoffed and confirmed, and by these presents do give, grant, bargain and sell, alien, enfeoff and confirm unto the said , his heirs and assigns, all that tract or parcel of land, capital, messuage, and appurtenances, lying and being in Prince George's County, on which the said Eleanor Berry now resides, and which was formerly the property of Thomas Clark, containing from six to seven hundred acres of land, be the same more or less, together with the negro slaves, the horses, hogs, cows, sheep, and cattle of every description, and their and each of their increase, and all the carts, wagons, carriages, and farming utensils of every sort, all of which will more fully appear by the schedule hereto annexed, marked A, situate, being and employed upon, and esteemed and taken as belonging to the said tract or parcel of land, and capital, messuage; also,
11 a little negro boy named Lemuel, which lives upon the land where the said Benjamin Berry now lives: In trust, however, for the following purposes and to no other, that is to say, that the said Robert Beale shall retain the legal title to all the said property during the life and widowhood of the said Eleanor Berry, and after her death *and* marriage, until such time as the eldest children shall come of age or be married, on which event or events the said Robert Beale shall convey the unconditional title in fee to all the property, both real and personal, unto the said children, and their heirs, or such of them as may be living at the time of such conveyance, and to the issue of any such as may be dead, such issue to take under said conveyance in the same manner that they would take under the statute of distributions in case the property were to be descended from an ancestor dying at the time when such conveyance may and ought to be made; and the said Robert

Beale shall permit the said Eleanor to have and enjoy the sole
12 and exclusive use of all the said property for and during the time in which she shall and may live and remain unmarried, without molestation or hindrance of him, the said Robert Beale, or said Benjamin Berry, or any other person or persons whatsoever; and the said on his part, covenants to and with the said parties of the third part, and with each of them that he will faithfully perform and execute all the obligations and duties imposed by and resulting from this trust.

In witness whereof the aforesaid parties of the first and second part have hereunto set their hands and seals the day and year first above written.

BENJ'N BERRY. [SEAL.]
ROBERT BEALE. [SEAL.]

Signed, sealed and delivered in the presence of— (the words "all of which will more fully by the schedule hereto annexed and marked A," being first interlined on the 2d page between the 9th & 10th lines.)
ENOS D. FERGUSON.
ELISHA PERRY.

13 PRINCE GEORGE'S COUNTY,
*Commonwealth of Maryland, set:*

Be it remembered that, on this fourth day of March, in the year of our Lord one thousand eight hundred and twenty-six, personally appears Benjamin Berry, party grantor within named, *and* before us, two justices of the peace, and acknowledged the within deed or instrument of writing to be his act and deed, and for the purposes therein mentioned. At the same time personally appears Barberry Berry, wife of the said Benjamin Berry, and the said Barberry Berry being by us examined apart from and out of the hearing of her said husband, "whether she doth make her acknowledgment of the same of her own free will and accord, and without being induced thereto by fear or threats of, or ill usage by her husband, or fear of his displeasure," acknowledges and declares that she doth make her acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure.

Taken and certified the day and year first above written.

ENOS D. FERGUSON.
ELISHA BERRY.

14 *A.—A schedule of the property of , as far as it can be remembered, and referred to in the annexed deed, and called for as the paper marked A.*

Five negro men, viz, Notley, Townly, Frank, Benjamin, and old James; eleven negro women, viz, Maria, Abby, Hannah, Cate, Liddy, Lucy, Mary Jane, Rachel, Cornelia, Polly; eleven boys, viz, Thomas, Dennis, Washington, Gassaway, Jacob, Hillery, James, Columbus, Turner, Lewis, and Lemuel; one negro girl named Dina; fourteen head of sheep, twenty-three head of cattle, nine head of horses, fourteen head of hogs; one cart, one carriage, four ploughs, one wheat-fan, one cutting-box, one ox-cart.

Enrolled March 5th, 1826.

STATE OF MARYLAND,
*Prince George's County to wit:*

I hereby certify that the aforegoing instrument of writing is truly

taken and copied from liber A B No. 4, folios 189, &c., one of the land-record books of Prince George's County.

15 In testimony whereof I have hereunto subscribed my name and affixed the seal of the circuit court of the Prince George's County, this 10th December, 1866.

[SEAL.] FRED'K SASSCER, *Clk.*

*Summons to answer.—Issued April 22d*, 1867.

In the supreme court of the District of Columbia, April 22, 1867.

BARBARA E. HUME AND AMAND. EUGENIE CROSby, compl'ts, *against* MARY D. BEALE, EXECUTRIX, &c. } No. 919. Equity docket 8.

The President of the United States to Mary D. Beale, ex'r, defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

16 MEMORANDUM.—That the defendant is to enter her appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

"*Marshal's return.*

"Summoned defendant by leaving copy of subpœna at her place of residence.

"D. S. GOODING, *Marshal.*

"APRIL 25TH, '67."

*Appearance of Jno. D. McPherson, esq., for defendant.*

HUME & CROSBY *vs.* BEALE, EX'X. } 919. Equity docket 8.

Upon the motion of J. D. McPherson, esq., filed April 27, 1867, in the following words, "Enter my appearance for defendant," it is, this 7th May, 1867, so ordered.

By the clerk.

17 *Answer of def't, Mary D. Beale, ex'x.—Filed June 5*, 1867.

In the supreme court of the district of Columbia.

MARY D. BEALE, EXECUTRIX OF ROBERT BEALE, dec'd, *ats.* BARBARA E. HUME & AL. } No. 919. Equity docket 8.

The answer of Mary D. Beale, ex'x, &c., to the bill of complaint of Barbara E. Hume and Amanda Eugenia Crosby.

This defendant, now and at all times reserving to herself all manner of exception to the many uncertainties and imperfections in the com-

plainant's bill of complaint, for answer to so much thereof as she is advised is material to be answered by her, saith she admits that she is the executrix of Robert Beale, late of Washington County, in the District of Columbia, deceased. And she admits that, some time about the year 1826, one Benjamin Berry made a deed conveying to
18 the said Robert Beale certain real and personal estate in Prince George's County, Maryland, upon trust to permit one Eleanor Berry to possess the same during her life and widowhood, and, after her marriage or death for the use of her three daughters, Russia Rosalie Berry, Barbara Ellen Berry, and Amanda Eugenie Berry. But this defendant has no knowledge of the terms of said deed, nor does she know whether Exhibit A, annexed to the bill of complaint in this cause is a true copy of the said deed, but has no reason to doubt that it is a true copy thereof, except that the words "eldest children" should be "eldest of her children."

This defendant, further answering, admits the marriage of the complainants and the death of their respective husbands and Russia Rosalie Berry, as set forth in the bill of complaint; and she admits the marriage and subsequent death of the said Eleanor Berry, as set forth in the said bill of complaint.

This defendant, further answering, says that all the matters and things set forth in the said bill of complaint respecting the deal-
19 ings of the said Robert Beale and Eleanor Berry with the trust-property, so far as said matters have any foundation in truth, happened before this defendant was born, and she has and can have no personal knowledge respecting the same; that the only knowledge she has respecting said matter consists of such information as was current in the family of her father respecting the previous history of the complainants who were the half-sisters of her mother, the wife of the said Robert Beale; and such further information as she has derived since the filing of the bill of complaint, from the examination of her said father's papers, and of the records of certain courts in Maryland, as hereinafter mentioned.

And this defendant, further answering, denies that the said Robert Beale ever converted to his own use, any of the trust-property mentioned in the bill of complaint, or the proceeds thereof, either directly or indirectly, whether by selling property which the said Eleanor
20 Berry had purchased out of said proceeds, or himself purchasing property out of said proceeds, or in any other way. And she further denies that the said Robert Beale ever advised, encouraged, or permitted the said Eleanor Berry to waste and squander the said trust-property, as charged in the said bill of complaint, but, on the contrary, this defendant avers that the said Robert Beale used every effort, and took all available measures to prevent and restrain the said Eleanor Berry from wasting the said property, as hereinafter more fully stated.

And this defendant, further answering, denies that the said Robert Beale ever was indebted to the said complainants, or either of them, on account of any of the matters and things alleged in the said bill of complaint, in the sum of fifty thousand dollars, or any sum whatsoever, or that he ever promised to settle with them or to pay them any sum of money in respect of the matters and things charged in the said bill of complaint.

21 And this defendant, further answering, says that her father, the said Robert Beale, in his life-time, was a man versed in business and prudent in his dealings, and, some time before his death, had made his will, appointing this defendant his executrix; and if, as charged

in the said bill of complaint, he had been under the necessity of making excuses to the complainants, in order to avoid a settlement with them, it is incredible that he should not have given some intimation to this defendant of the claims which they might set up, and of the danger that would thereby threaten his estate; and this defendant avers that never, on any occasion, did the said Robert Beale intimate to her that any claim could be set up against his estate on account of the matters set forth in the said bill of complaint, but, on the contrary, always spoke of the complainants as having been a source of expense to him from early life, besides occasioning him anxiety and trouble on account of the difficulties in which they and their husbands were involved.

22 And this defendant, further answering, says that, from the sources of information mentioned above, she believes the history of the said Robert Beale's dealings with the trust-property to have been as follows: That the said Eleanor Berry, very soon after being put in possession of the trust-property, according to the deed of Benjamin Berry, began to sell and dispose of the negroes and stock of the plantation, and convert the proceeds to her own use. She had also contracted debts and had suffered judgments to be recovered against her, and some of the trust-property was taken in execution to satisfy such judgments. It was also reported and believed that the said Eleanor Berry had married one Thomas Owings, whereby the trust as to her had determined. That the said Robert Beale then resided in the city of Washington, at a considerable distance from the plantation on which was the personal property included in the trust; and was therefore unable to exercise close supervision over it; but that when the con-

23 duct of Eleanor Berry, the life-tenant, was brought to his knowledge in the early part of the year 1830, he filed a bill in the high court of chancery of Maryland for an injunction to restrain the said Eleanor Berry from further wasting the property; that the injunction was granted, and in pursuance of the decree in said cause or of some arrangement of which this defendant is not informed, the said Robert Beale, in the year 1830, took possession of the said real estate and what remained of the personal property, and resided thereon for a short time, having with him and in his charge the said three children of the said Eleanor Berry, two of whom are the complainants in this cause; that, in the same year, 1830, the said children of Eleanor Berry, by their next friend and uncle, John E. Berry, filed a bill in the circuit court of Prince George's County, M'd, against their mother and Bobert Beale, setting forth the waste and conversion of the personal property committed by the said Eleanor Berry, which they charged also to have been

24 committed by Robert Beale or with his consent, and setting forth the marriage of the said Eleanor with one Thomas Owings, and praying for an account from the said defendants of their dealings with the trust-property, and also praying the appointment of a receiver; that a receiver was appointed, and the defendant believes some account was rendered, as she finds memoranda among her father's papers relating apparently to the matter; but she finds on the files of Prince George's County court, which she has examined, no decree finally disposing of the controversy, and she prays to be allowed the benefit of the decree in said cause should any such be found to have been rendered, as a bar to this suit.

And this defendant, further answering, saith that some time prior to to the year 1834, the said Eleanor Berry and Robert Beale filed a bill in equity in the circuit court of Prince George's County, praying a sale of the said trust-property, both real and personal, and the same

25 was sold under a decree of the said court by trustees duly appointed, and the proceeds of sale was distributed under the order of said court some time in the year 1834.

This defendant, further answering, saith that, after the sale of the said trust-property, the said Robert Beale continued to be the friend and adviser of the said complainants, as well after their marriage as before, and during their subsequent widowhood, when all the money they had received from their trust-estate being used by their husbands, they were reduced to dependence on their relations. And during all this time, when the husbands of the complainants were grasping every cent of their little means, and when the complainants themselves were in want of all their dues, and neither they nor their husbands would have hesitated to adopt any measures that promised to yield them money, this defendant confidently believes that at no time was it ever

26 hinted that the said Robert Beale was indebted to the complainants in any way whatever on account of the aforesaid trust, and if the complainants ever entertained in his life-time any purpose of ultimately commencing such a proceeding as the filing of the bill of complaint in this cause, they sedulously dissembled and concealed said purpose from him, either because they wanted courage to avow so unjust a design before him, or because they knew that his knowledge of the facts would enable him to defeat their unfounded claims, if preferred during his life and to prepare his executrix to meet them after his death.

And this defendant, further answering, saith that, by the terms of the deed of trust aforesaid the trust determined on the marriage of the said Eleanor Berry, and of Barbara E. Berry, being the eldest of her children; that Barbara E. Berry was married in the year 1833, as stated in the bill of complaint; and Eleanor Berry was married either in

27 or prior to the year 1830, as stated in the bill of complaint filed by the complainants and their deceased sister, in the circuit court of Prince George's County; or in 1843, as stated in the bill of complaint in this cause, and consequently all grounds of action existing in this case, must have occurred between 24 and 34 years ago, and either at one or the other of those dates, and by the sale of the trust property under a decree of the circuit court of Prince George's County in or prior to the year 1834, the trust was determined; and this defendant submits that stale demands of such long standing concerning matters which passed in another jurisdiction and have been made the subject of frequent litigation, are not deserving of the countenance or favor of a court of equity.

And this defendant, further answering, says that she is informed by memoranda found among her father's papers that sundry other suits were prosecuted by him, and one other against him concerning

28 the trust-property in question, but she has been unable in any case to find a full record, though she has been at trouble and expense in endeavoring to recover them; and she prays that she may be permitted to plead the same or offer the records in evidence if they be recorded and shall prove to be competent by way of estoppel or as evidence to be used in bar of this suit.

And this defendant, further answering, saith that if the complainants ever had any cause of action or suit against the said Robert Beale or this defendant as his executrix, for or concerning any of the matters or things in the said bill mentioned, which this defendant doth in no sort admit, such cause of action did accrue or arise above three years before

the filing of the said bill, and before serving or sueing out process against this defendant to appear and answer the same. And further, that the said cause of action did occur and arise above twelve years before the filing of the said bill; and further, that the said cause
29 of action did accrue and arise above twenty years before the filing of the said bill and the suing out of process as aforesaid; nor did the said Robert Beale, at any time within the respective periods of time last above-mentioned, promise or agree to account for or make satisfaction of the said complainants, or to pay them any sum of money for or by reason of any of the matters charged in the said bill of complaint; nor did he become liable to them by any conversion of any of the said trust-property; nor did he convert to his own use, or sell or dispose of any of the said trust-property within any of the respective periods above mentioned.

And this defendant having fully answered, prays to be hence dismissed with her reasonable costs in this cause sustained.

MARY D. BEALE.

DISTRICT OF COLUMBIA, *sct:*

Mary D. Beale, being duly sworn, deposes and says that, the
30 matters and things set forth in the foregoing answer, as of her own knowledge, are true; and those stated upon the information of others, she believes to be true. June 5th, 1867.

R. J. MEIGS, *Clerk.*

*Replication.—Filed Dec'r* 14, 1867.

In the supreme court of the District of Columbia.

BARBARA E. HUME & OTHERS *vs.* MARY D. BEALE, EX'X, &C. } 919. Equity.

The complainants, for reply to the answer of the defendant, say that it is not true, as alleged in the answer of defendant, that said Robert D. Beale did at any time during his life have any settlenent with the complainants or either of them, respecting the trust-property which they have sued for in this suit, nor did he in his life-time ever pay
31 said complainants or either of them, any sum of money, so far as they have any recollection or belief, on said liability as trustee, nor has said def't made any settlement or paid any sum since his death. They further deny that any settlement was ever made by any court, or in any other way, of the matters and things charged in their bill herein. And they say if such had ever been done, the def't, they presume, will be able to show some record, receipts, or other proper evidence of the fact.

They deny the construction which the def't puts in her answer on the deed of trust, and aver that said Robert Beale was responsible for the whole of the property embraced in said deed, and that his estate is justly liable for the same. They deny that Mrs. Eleanor Berry had the right or power to dispose of any of said trust-property without the consent of said Beale, or that she did so dispose of said trust-property, or any part of it, without his consent; and they also deny that said Beale used any proper efforts to prevent the waste and destruction of said
32 property. They admit that it has been a good many years since

said Beale's liability first accrued; but they deny that the statute of limitations can apply in this case; because, from time to time during the whole period, said Beale made the fairest of promises to settle and pay these complainants, making always some excuse, and being a brother-in-law, they confided in his promises, which they are now satisfied were all false and fraudulent, made to prevent them from sueing him; indeed, up to within less than a year of the time of his death, he promised to provide for the payment of his indebtedness to these complainants, in his will. And on many occasions within less than three years from the beginning of this suit, he acknowledged his indebtedness and promised to pay the same. These complainants expressly deny each and every allegation in the answer of the said def't not herein admitted, and pray as in their original bill.

BARBARA E. HUME,
AMAND. E. CROSBY.

HUGHES, DENVER & PECK, *For Compl'ts.*

Subscribed & sworn to before me this 23d of September, 1867.
CHARLES WALTER, *J. P.*

33 *Transcript of record filed on behalf of defendant.—Filed Jan'y 2, 1868.*

STATE OF MARYLAND, *Prince George's County, sct:*

At a county court of the first judicial district of Maryland, begun and held at Upper Marlborough town, in and for Prince George's County aforesaid, on the second Monday in January, it being the tenth day of the same month, in the year of our Lord eight' hundred and thirty-one, and the fifty-fifth year of the independence of the United States of America, were present, the Honorable John Stephens, esquire, chief judge; Edmund Key & John R. Plater, esquires, associate judges; Thomas Bruce, esquire, sheriff; Aquilla Beall, clerk.

In the record and proceedings of the same court, amongst others, were the following, to wit:

34 BARBARA E. BERRY, AND OTHERS, BY John E. Berry, their guardian,
*vs.*
THOMAS OWENS AND ELEANOR, HIS WIFE, AND Robert Beale.

Be it remembered that, heretofore, to wit, on the eighteenth day of December, in the year of our Lord one thousand eight hundred and thirty, the said Barbara E. Berry, and others, by John E. Berry, their guardian, by Richard Peach and Clement Dorsey, their attorneys, referred to the honorable the judges of Prince George's County court, sitting as a court of equity, their bill of complaint which is contained in the words following, to wit:

"To the honorable the judge of Prince George's County court, sitting as a court of equity:

Humbly complaining, showeth unto your honors your orators, Barbara Ellen Berry, Amanda Eugenia Berry, and Rusia Rosilea Berry, of the county aforesaid, and minors, by their uncle and next friend,
35 J. E. Berry, that their grandfather, Benjamin Berry, by deed, dated on the fourteenth day of March, in the year of our Lord eight' hundred and twenty-six, duly acknowledged and recorded, a copy whereof, marked Exhibit No. 1, is herewith filed, and which your ora-

tors pray may be considered as a part of their bill, conveyed to a certain Robert Beale all the property, real and personal, in the said deed mentioned, for and upon the trust in the said deed mentioned, to wit, to and for the use of Eleanor Berry, the mother of your orators, for and during her widowhood or natural life, and thereafter to and for the use of your orators. Your orators further charge, that all the negroes, save a few superanuated ones, have been sold by the said Eleanor or the said Beale, or by his assent, as your orators verily believe, and all the stock in the said deed mentioned, and the proceeds wasted; that wood and timber have also been cut and sold from the said land, and that under the present management the said lands will be highly injured. Your orators further admit that their prochein amie, and he alledges that
36 he has brought an ejectment at law to try the validity of the said deed, and nothing herein alledged is to compromise his claim.

Your orator further charges that their mother alleges that she married to a certain Thomas Owings, of Kentucky, and now calls herself Eleanor Owings. All which waste and doings of their said mother and the said Beall, are contrary to equity and good conscience. In tender consideration whereof, and inasmuch as your orators are remidless in the premises, and can only be relieved by the interposition of a court of equity; to the end, therefore, that the said Eleanor and her husband, Thomas Owings, and the said Beale, may true and perfect answers make in the premises, and set forth how much of the said personal property has been sold, and by whom, and when, and at what prices; and that they may account for the same; that the annual rents of the said lands may be applied to their exclusive support, and that another trustee may be substituted in place of the said Beale, and that your orators
37 may have such other and further relief as to your honors may seem meet: May it please to grant unto your orators the State's writ of subpœna, directed to the said Eleanor and the said Beale, commanding them to appear, answer the premises, and abide by such decree as your honors shall pronounce. And they, as in duty bound, &c., will ever pray.

PEACH & C. DORSEY,
*For Complainants.*

STATE OF MARYLAND, *Prince George's County, set:*

Be it remembered that John E. Berry personally appeared and made oath that he verily believes, and is creditably informed, that the facts stated in the preceding bill to be true.

Sworn to this 16th day of December, 1830, before me, the subscriber, a justice of the peace of said State, in and for said county.

P. E. SCOTT.

38 BERRYS *vs.* OWINGS & BEALL. } Bill in equity.

To the honorable the judges of Prince George's County:

The complainants pray the court to appoint a receiver on the facts stated in the above case to take charge of the property mentioned in Exhibit No. 1, or so much thereof as can be found, and to retain the same, under such directions as this court may think proper to give, until such time as the cause may be decided between the complainants and defendants, the said receiver to give bond to the State of Maryland in the penalty of ten thousand dollars, with such securities as this court

or one of the judges thereof shall approve, conditioned for the faithful performance of the trust reposed in him, &c.

PEACH AND DORSEY,
*For Complainants.*

Whereupon the court here passed the following order, to wit:

Roderick McGregor is appointed receiver & is hereby author-
39 ized to take charge of the property in the proceedings mentioned in this case, and the respondents, Beall & Thomas Owens & Ellen, (his wife,) are required to deliver the same to him.

EDMUND KEY.

And the said complainants, by their solicitors aforesaid, filed also in court here with the foregoing bill the following exhibit, to wit:

[See deed of trust filed as exhibit to bill.]

And in pursuance of the order heretofore incorporated the said Roderick M. McGregor filed in court here the following bond, to wit:

Know all men by these presents that we, Roderick M. McGregor, John E. Berry, and Nathaniel M. McGregor, all of Prince George's County, in the State of Maryland, are held and firmly bound unto the said State in the full and just sum of ten thousand dollars, current money, to be paid to the said State or to its certain attorney; to which payment well and truly to be made and done, we bind ourselves and every
40 of us, our and every of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 17th day of December, in the year of our Lord 1830.

Whereas the above-bound Roderick M. McGregor has been appointed a receiver by the honorable the judge of the Prince George's County court as a court of equity to take charge of certain real and personal estate, particularly mentioned and described in the proceedings in a cause now depending in the said county court as a court of equity, in the name of Barbara Ellen Berry, Amanda Eugenia Berry, and Rusia Rosalie Berry, minors, by their uncle and next friend, John E. Berry, against Eleanor Owings, Thomas Owings, and Robert Beale:

Now, the condition of this obligation is such, that if the said Roderick M. McGregor shall well, truly, and faithfully take care of the said real and personal estate, and account to the said county court as a court of equity for the said real and personal estate, and the hire, rents, issues, and profits thereof, and shall, in all things, comply with his duty
41 as receiver, according to law, then this obligation to be void; else to be and remain in full force and virtue in law.

ROD'K M. McGREGOR. [SEAL.]
N. M. McGREGOR. [SEAL.]
JOHN E. BERRY. [SEAL.]

Signed, sealed and delivered in the presence of—
RICH'D BEACH.

Which being submitted to the court was ordered by said court as follows:

The securities to this bond are approved.

EDMUND KEY.

17 DECEMBER, 1830.

And the said complainants, by their solicitors aforesaid, filed also in court here with the aforegoing bill and exhibit, the following affidavit, to wit:

STATE OF MARYLAND,
*Prince George's County, sc :*

On this 13th day of December, 1830, personally appears Otho B. Beall, before me, the subscriber, one of the associate judges of Prince George's County court, and makes oath on the Holy Evangely of Almighty God that, since the death of Benjamin Berry, late of said
42 county, deceased, a large portion of the personal estate mentioned in a deed of trust executed by the said Benjamin Berry, senior, to a certain Robert Beale for the benefit of the widow of Benjamin Berry, junior, for and during her life-time or widowhood, and afterwards for the benefit of the children of the said Benjamin Berry, junior, has been removed from the plantation mentioned in said deed of trust, and this deponent verily believes that the said portion of the said personal estate within mentioned has been absolutely wasted contrary to the provisions and intention of said deed of trust.

Sworn before

EDMUND KEY.

And whereas, afterwards, to wit, on the 23d day of December, 1830, the said Robert Beale filed in court here his answer to the aforegoing bill of complaint which is contained in the words following, to wit:

The separate answer of Robert Beale to the bill of complaint of Barbery Ellen Berry, Amanda Eugenia Berry, and Russia Rosalie Berry, complainants, by their uncle and next friend.

43 This defendant, now, and at all times hereafter, saving and reserving to himself all and all manner of benefit of exceptions that may be had or taken to the manifest and manifold errors, irregularities, defects, and imperfections contained in the said bill of complaint, nevertheless, for answer thereunto or unto so much thereof as this defendant is advised that it s at all material that he should make answer unto, he answereth and says:

That this defendant denies any right or authority in the said John E. Berry to file any bill of complaint, or institute any legal proceedings of any sort or description whatever in this or any other court in the name and in behalf of said infant complainants, having now living in the county of Prince George's a grandmother, a mother, a half-brother, a half-sister, and that said John E. Berry, who has voluntarily & gratuitously instituted said proceedings, has never previously indicated any particular interest in the behalf of said infant complainants; that he has instituted an action of ejectment in the county court of Prince
44 George's to recover the tract of land, plantation, and premises, which is all the real estate claimed by said minors, and which they claim to hold under the said deed set forth and exhibited by said complainant; that all the negroes and other property claimed by said complainant is held by this defendant, as their trustee, under the said deed of trust which the said John E. Berry, their next friend, is seeking to annul and invalidate by his proceedings in said ejectment suit, and that, should this defendant be compelled by the decree of this honorable court to yield and surrender said trusteeship to said Berry, he would be pursuing for his own use and emolument said suit, which he would have to defend in his character as trustee. Wherefore this defendant prays that he may have all the advantages of this objection which he would have if the same were formerly pleaded.

And, further answering, this defendant says that he admits that Benjamin Berry, the grandfather of said complainants, did make and execute the deed set forth and mentioned in said bill of complaint,

45 but for the contents of said deed and the trusts therein contained, he prays leave to refer to the original deed when produced, or to a certified copy thereof from the proper record.

And this defendant, further answering, says that, inasmuch as by the premises of said deed, the said Eleanor Berry in said deed mentioned was entitled to all the said property during her life or widowhood, and inasmuch as she was the mother of said complainants, and able, and, as this defendant believed and presumed, willing and desirous to promote their interest, this defendant for a long time forebore to take any active or personal interest in the said trust-property, particularly as this defendant resided in the city of Washington, at some distance from said property.

And this defendant, further answering, says that, early in the present year, he ascertained that said Eleanor Berry was, as he conceived, greatly injuring and impairing the value of said trust-property, and that he endeavored to prevent the same, but finding all other means ineffectual, he, this defendant, filed a bill in the high court of chancery

46 of Maryland, praying, among other things, an injunction to restrain any further injury or waste by the said Eleanor, her agents, or servants, and upon the granting and issuing of the said injunction this defendant took possession of said trust-property, abandoned his residence in Washington, and at great personal inconvenience, and at great personal sacrifices, moved upon said property, and has continued to reside there ever since faithfully watching over, protecting, and improving the interests of said complainants, who have resided with him.

And this defendant, further answering, says that he believes it to be true that many of the most valuable of the negroes conveyed in and by said deed of trust have been sold by said Eleanor Berry, or under execution issued against her, but this defendant denies that he has sold or disposed of any of said negroes. And further, he says he believes and admits that considerable waste and destruction had been committed during the time when said Eleanor had the control & manage-

47 ment of said property, and that this was among the grounds upon which this defendant filed his bill of complaint as aforesaid, and upon which the chancellor proceeded in awarding said injunction; but this defendant denies that he has sanctioned or authorized any such waste or destruction; and he further avers that, to his knowledge and belief, not more than three or four trees have been cut upon said plantation since the same has been under his control which could be by any reason or propriety called waste; that the same were cut without the knowledge or assent of this defendant, but that he obtained payment for them, and applied the money which he received, viz., fourteen dollars and some cents to the necessary expenses and wants of said infant complainants.

And this defendant, further answering, says that, when he assumed the possession and management of said plantation, he found it in a deplorable and devastated condition, entirely destitute of hands, horses, cattle, stock, agricultural implements and utensils, and little or

48 no care taken of the crops. That this defendant immediately applied himself to put the property in order, and to repair the injuries which it had sustained, and this he has accomplished so far as his means would admit; and he avers that, so far from its having deteriorated in his hands, he has conducted the business of the plantation in a judicious manner for the best advantage and interest of all concerned; and this defendant cannot withhold an expression of surprise that the said John E. Berry, being on the adjoining plantation where he had

daily opportunities of seeing what passing on the plantation of these complainants, should have quietly looked on and witnessed the waste and destruction committed by the said Eleanor Berry without any attempt to arrest the same, but that he should now, when there is no such waste or injury, endeavor to obtain the control and management of the same, and this defendant cannot attribute this gratuitous interference to any desire to further the interests of said complainants, but altogether to personal & private considerations, and a disposition
49 thus to effectuate the objects of said action of ejectment.

And this defendant, further answering, says that he has heard that the said Eleanor Berry has intermarried with one Thomas Owings; that she has asserted such her marriage, and has assumed the name of said Owings, but this defendant is unable to say whether such be or be not the case, and he leaves it to said complainant to establish the same by testimony, if it be at all material for them so to do. And this defendant denies all and all manner of fraud, combination, or conspiracy, and humbly praying that your honors, by some order or decree, allow him out of the said trust-property to defray the expenses to which he is or may be subject by suits brought or to be brought, he prays to be hence dismissed with his costs in this behalf most wrongfully sustained.

And this defendant, further answering, says that he has rented out to one Nathaniel McGregor & Henry McGregor the largest and most productive part of said land for the term of two years, receiving
50 therefor one-half of the crops of said land, which this defendant believes will be much more to the interest and advantage of said infant complainants than if it were rent for a moneyed rent. This defendant further says that one Roderick McGregor, brother to the said Nathaniel & Henry, has been appointed receiver of said property, and that he has given a bond in the sum of 10,000 dollars for the performance of his duty as receiver. This defendant avers and believes that the security given in said bond is totally insufficient. And this defendant, further answering, says that if your honors should deem it at all necessary that a receiver should be appointed before a final hearing of the trust of the obligations in said bill, that this defendant be allowed to present such a person as he believes will have a deep interest in the welfare these infant defendants.

And finally this defendant prays your honors to rescind the order given until the meeting of your honorable court.

51 PRINCE GEORGE'S COUNTY, *sct.:*

On this 20th day of December, 1830, personally appears before me, one of the associate judges for the first judicial district of the State, Robert Beale, and makes oath on the Holy Evangely of Almighty God, that the several matters and allegations in the aforegoing answer are true, to the best of his knowledge and belief.

EDMUND KEY.

And whereupon, in pursuance of the prayer of the aforegoing bill, it is ordered that a subpœna issue in the usual form, which is contained in the words following, to wit:

[SEAL.] PRINCE GEORGE'S COUNTY, *sct:*

The State of Maryland to Thomas Owings and Eleanor, his wife, and Robert Beale, of Prince George's County, greeting:

Be it known that all excuses and delays set apart, you be and ap-

pear before the judges of Prince George's County court to be
52 held at Upper Marlboro' Town, on the second Monday in January, inst., to answer the bill of complaint of Barbara E. Berry and others, by John E. Berry their next friend, in said court exhibited against them, as a court of equity. Hereof you are not to fail.

Witness the Honorable John Stephen, chief judge of the first judicial district, the 27th day of Octo., 1830.

Issued the 4th day of Jan'y, 1831.

A. BEALL, *Clk.*

On the back of which said writ appears the following endorsement, to wit:

"Served Beale.

"THOMAS BRUCE, *Sh'ff.*"

And thereupon the cause is continued until the second Monday in January next.

And now here, at this day, to wit, the second Monday, in January, being the tenth day of the same month, in the year of our Lord eighteen hundred and thirty-one, came into court here as well the said complainants by their solicitors aforesaid, and the said Robert
53 Beale, by Henry Ashton, esquire, his solicitor in this behalf; and thereupon all and singular the proceedings aforesaid, in the cause aforesaid, with all things thereunto relating, being by the court here heard and fully considered, it is adjudged, ordered, and decreed, that the bill of complaint of the said complainant be dismissed, and that the said complainants be in mercy for their false clamor thereupon.

It is also considered that the said respondent recover against the said complainants, the sum of twelve dollars and seventy cents, ($12.70,) by the court here adjudged unto the said respondent, at his request, for his costs and charges by him sustained about his defence in this behalf, and that the said respondent have thereof execution, &c.

Test:

AQUILA BEALL, *Clk.*

54 *Docket entries.*

C. D. R. P. H. A. for R. B.

BARBARA E. BERRY AND OTHERS, BY JOHN E. Berry, their next friend, *vs.* THOMAS OWINGS AND ELEANOR, HIS WIFE, and Robert Beale. } Filed 18 Dec., 1830. 377.

Bill-bond. Order that subpœna issue. Aff't filed.

1830, Dec'r 23d. Seperate answer of Robert Beale, f'd. Subpœna issued. Served Beale. Not found, the rest.

1831. Jan'y 6. Bill dismissed.

STATE OF MARYLAND,
*Prince George's County, sct:*

I hereby certify that the aforegoing is truly taken and copied from the records and proceedings of Prince George's County court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the circuit court for Prince George's County, this

28th day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.]

HENRY BROOK,
*Clerk of C. C. for Pr. Geo. Co'ty, Md.*

55 *Order for hearing.—Filed March 3, 1868.*

In the supreme court of the District of Columbia.

HUME ET AL. *vs.* BEALE, EX'X. } 919. Equity docket 8.

On motion of J. D. McPherson, solicitor for defendant, it is, this 3d day of March, 1868, ordered that the above cause be set down for hearing, and placed on March calendar.

*Affidavit of compl'ts for continuance.*

In the supreme court of the District of Columbia.

BARBARA HUME ET AL. *vs.* ROB'T BEALE'S EX'X. } No. 919. Equity dock. 8.

The plaintiffs ask the court for a continuance of this cause until the next term of this court for the following reasons:

56 The plaintiffs are both widows, without sufficient means to enable them to have prepared their cause as rapidly as they otherwise would have done and desired to do. They want the depositions of witnesses residing in the State of Maryland, namely, James I. Forbes & Nathaniel McGregor, by whom they believe they will be able to prove material facts in support of the allegations of their bill. They believe that they will prove by each of said witnesses that a large amount of their property, consisting of negroes and money and other personal property, came to the possession of Rob't Beale in his life-time, which he disposed of and appropriated to his own use, and which he never accounted for to these plaintiffs. They believe these facts when proven will be true.

They had made preparation to obtain said depositions in time for this term of the court, but was prevented on account of the sickness of one

57 of their counsel, who had attended principally to the preparation of their case. They allude to Judge J. W. Moore; they trusted to him chiefly to attend to taking their proof, and to prepare their cause for trial. They do not ask this continuance for purposes of delay, but that justice may be done.

BARBARA E. HUME.

Sworn and subscribed before me this 23d day of March, A. D. 1868.

[SEAL.]

N. CALLAN,
*Notary Public.*

58 *Testimony for complainants, taken before J. J. Johnson, examiner.*

Deposition of John Douglas for complainants.

The said JOHN DOUGLAS, being duly sworn, deposed and said, in answer to questions propounded by Judge Moore, sol'r for complainants:

I was acquainted with Robert Beale in his life-time. I knew him about 25 years. I had business transactions with him from about 1847 up to 1862, or during the war. I never knew Mr. Beale until I met him here in the District of Columbia. Mr. Beale said he owed these ladies (half sisters to his wife) some money. I was endorser upon Henry Douglas' notes, which Mr. Beale held, and he was pressing me for the money; he said the money was for these ladies; that he owed them money.
59 These conversations occurred more than fifty times; it run through a course of a number of years—you may say to the day that I settled with him. I finally borrowed the money, and paid him. I have the papers that will show the date of the settlement with Mr. Beale. I think it occurred about four years ago. I am not positive. When Mr. Beale pressed me for the money he said to me if I would pay one per cent., he would get the money from Mr. Riggs. On two occasions I paid that sum of money—once a hundred dollars—as a bonus to procure the money. This one hundred was paid at his house, and the other two hundred was paid at Mr. Riggs' office. The two hundred dollars was paid as a bonus also. He told me often that he must raise money, or sell his house to raise money, to pay these ladies. He said he wanted to raise at that time five thousand dollars to pay those ladies. The house he mentioned was to the east of his residence. The year
60 that I settled with him he brought one of these ladies out to my house with him. I was sick at the time, but he said he must see me, and came up to my room. I am not acquainted with Mrs. Hume and Mrs. Crosbey. I have no personal acquaintance with them. I have frequently seen them there with him, and no doubt could recognize them if I were to see them. In speaking of them I think he mentioned one of them as Berry. Not to my distinct recollection did he mention Hume. I gathered from him in that conversation that their original name was Berry. I do not think Mr. Beale mentioned real estate to me.

Cross-examined by Mr. McPherson, for defendants:

Mr. Beale told me he had paid some premium on some money for those ladies, which premium he exacted from me, and made me pay it. In speaking of those ladies, he characterized them as relations of his wife, and said they were poor. I remember, in speaking of those
61 ladies, he simply used the name Berry. He told me the way he became indebted to them was, he had charge of their money, and borrowed it. I was endorser on my brother's notes, which he held, to the amount of $4,300, and at this time, when he was pressing me, it was down to $3,000, and when settled, it was $2,600. He mentioned no real estate in my conversations with him. It was about money. He may have mentioned real estate, but I have no recollection of it.

Adjourned till to-morrow morning at ten o'clock.

JNO. J. JOHNSON, *Examiner.*

Deposition of Townley Johnson.

1867, August 30th, 10 o'clock, a. m. Met pursuant to adjournment, and thereupon complainants produced, as a witness, one Townley Johnson.

And the said TOWNLY JOHNSON, being of lawful age, and being by

me first duly sworn to testify the truth, the whole truth, and
62 nothing but the truth touching the matters at issue in said cause, did there and then depose and say as follows, viz:

By Mr. Moore:

I knew Mr. Robert Beall in his life-time. I knew him well for nearly forty years before his death. I am also acquainted with Mrs. Hume & Mrs. Crosby. I have known them from childhood. When I first knew them, I was the slave of Doctor Walter Bruce. I was then purchased by Mr. Benjamin B. Berry, who was the father of Mrs. Hume and Mrs. Crosby. His father was also named Benjamin Berry, and he was the father of Mrs. Hume and Mrs. Crosby. As near as I can come at it, old Mr. Benjamin Berry, the grandfather, died some six or seven years before Mr. Robert Beale was married. He married a Mrs. Elizabeth Forbes, sister to Mrs. Hume and Mrs. Crosby by the mother's side. After the death of my master, Benjamin B. Berry, I remained on
63 the farm until Mr. Beale persuaded them to break up farming, and come to the city to live. This was in the year 1827 or 1828, when Mrs. Berry & Mr. Beale came to the city. Mr. Beale had no property before his marriage with Miss Forbes. I knew that well. He had a horse, and that is all the property he had. As far as I know, Mrs. Berry & Mr. Beale were hand and glove together, and between them they sold the colored people, and purchased property here in Washington with the proceeds. I don't know exactly how many colored persons came into possession of Mrs. Berry and Mr. Beale. There were somewhere in the neighborhood of thirty-five that were sold. There was a woman by the name of "Abby," & three children sold to Otho Bell. A man by the name of Notly, and his wife, sold to Mr. Coburn, in this city, & three or four children of Notly's. There was a boy by the name of "Tom," that was sold, and one by the name of Stephen, that was sold to a Georgia man. There was a girl by the name of "Cornelia," a boy by the name of Lemuel; also a boy by name Gassa-
64 way, and myself. Mr. Letty bought me. They could not get me to send to Georgia. I flew the track, and they sold me running. There was also a woman by the name of Lidia, sold to one of the Berrys, I think. There was also an old woman by the name of Hannah, sold to some one in the city here—I don't know who it was. There was also one by the name of Mary, sold down in Maryland—I don't remember to whom. Also, a girl by the name of Sophia, sold to Georgia; also one by the name of Lucy, & her two children, sold to Georgia. When I say they were sold to Georgia, I mean they were sold to negro-traders. There was also one by name Polly, sold to the traders.

Question. Do you remember one by name Washington?

Ans. Yes, sir; he was sold to the traders.

Q. Do you remember one by the name of Hilery and one by the name of Columbia and one named Lewis?

65 A. Yes, sir; the two first were sold to the traders; Lewis did not belong to the Berry estate; there were, to my recollection, eight work-horses and two mules, eight steers and nine milch cows, twenty-three sheep, twenty-five hogs, four of which were breeding sows, five ploughs, two corn-cultivators, three harrows, twenty-five hoes, eight axes, three pair of wedges, four mowing-cradles, four grass-scythes, one wagon, one ox-cart, one horse-cart, that came in possession of Mr. Beale, of Mrs. Berry, that belonged to the estate of Mr. Benjamin B. Berry, the father of Mrs. Hume and Mrs. Crosby, also valuable household furniture and library; they were disposed of some how, but I don't

know how. Mr. Beale had the active control and management of all this property and the slaves, after the death of Mr. Benjamin B. Berry, the father of Mrs. Hume & Mrs. Crosby, and Mrs. Berry gave the management of everything into Mrs. Beale's hand. On coming to
66 this city, Mr. Beale purchased a house on 10th street between F & G streets. He purchased it for Mrs. Berry and her children. She moved into that house from the country. I brought trees from the country and planted them in the back yard. I don't remember how long she lived there, but she lived there a long time. She never moved out of the house, finally. She went off travelling, and during her absence the furniture was all moved out of the house, and she never lived there afterwards. She also bought a square of ground between New York Avenue & Massachusetts Avenue, and built a stable on it. I suppose it was sold. I don't know by whom it was sold. If it was hers, I suppose Mr. Beale had possession of it. I never saw Mr. Beale in possession of the house on 10th street, but I always supposed that he had possession. After the death of Mr. Benjamin B. Berry, Mr. Beale became
67 very rich, & rich very fast, so much so that I wondered how he got so. I never knew or heard of him ever paying anything to Mrs. Hume and Mrs. Crosby, or either of them.

Cross-examined by Mr. McPherson:

Mr. Beale lived in Washington City when I first knew him; he was a lawyer; I knew him three or four years before he was married. He used to drive down from Washington, and sometimes came twice a week, and sometimes once a week; he generally made a pretty long stay when he came. Mrs. Berry was then residing on the farm where her husband died. The house was a large house, and was furnished with the best of furniture, and the library was said to be worth $5,000. Mrs. Berry lived finely, and entertained a great deal. Mrs. Berry moved to the city before Mr. Beale was married, but I don't recollect exactly how long before. Mr. Beale made the bargain with Mr. Leckie for
68 me when I was sold, and I suppose he made the bargain for the sale of the other colored people. I know that Mr. Beale made the bargain for me, because Mr. Leckie told me so. I don't know who received any of the money for the negroes. After Mrs Berry came to Washington she rented the farm to Mr. Ferguson, and what old people had not been sold remained on the farm. I remained there about a year after she came to Washington. I have seen the negro traders there often. Mr. Beale would bring them down there from the city, and have the negroes hiding about like young rabbits. And I have often heard the servants say that they thought Mr. Beale ought to interfere and protect the children. I never knew him to interfere to prevent them being sold. He only told me that he would see that I was not sold to Georgia. My wife belonged to him. I can't say how long she (Mrs. Berry) lived on 10th street—some three or four years, I think. Her chil-
69 dren were with her. Mrs. Hume & Mrs. Crosby told me that Mr. Beale never allowed them anything, or did anything for them. I never knew that there was to be suit until after the death of Mr. Beale, when Mrs. Hume told me that she was going to enter suit, and that I would have to be a witness, as I knew more about the affairs than anyone else. The property that I have spoken of as having been taken possession of and disposed of by Mr. Beale and Mrs. Berry, was taken possession and disposed by them after Mr. Beale's marriage. I never saw Mr. Beale have any possession of any of the servants, except when any of them were to be sold, when, of course, he always had a hand in

it. There were only four of the servants left on the farm after Mrs. Berry came to Washington—two old men and two old women. These four, myself, and three or four house servants, were all that re-
70 mained undisposed of when Mrs. Berry came to the city. I think one of the old ones that were left down there was sold afterwards to Mr. John T. Berry. I lived with Mr. Benjamin B. Berry some eight or nine years before his death. His wife had no property when she married him. His father, old Mr. Benjamin Berry, gave him the farm and stock and servants, and let him have it to make what he could, but gave him no title to it, or any of it, because Mrs. Forbes (his wife) had the reputation of being an extravagant woman, and he was fearful that the children might come to want.

Re-examed by Mr. Moore:

I mean that before Mr. Beale was married, he would bring the negro traders down there to see the servants, but he did not act as guardian for the children until after his marriage.

his
TOWNLY + JOHNSON.
mark

Subscribed and sworn to before me this 30th day of August, 1867.
M. ASHFORD, *Examiner.*

71 And thereupon the examination of John Douglas, was resumed as follows:

By Mr. Moore:

The lady now present, Mrs. Hume, is the one that was at my house, and the one to whom I referred yesterday as being the person for whom Mr. Beale wished to raise the money. My best recollection this morning is, that it was about the 15th of January 1863, that I had the last conversation and last money transaction with Mr. Beale. He had been extremely urgent about thirty days before that time, and the property had been advertised for sale, upon which the notes were a lien. No money was ever paid by Mr. Beale to Mrs. Hume or Mrs. Crosby, to my knowledge.

JOHN DOUGLAS.

Subscribed & sworn to before me this 30th day of August, 1867.
M. ASHFORD, *Examiner.*

72 Deposition of Barbara E. Hume, for compl'ts.

In answer to question put by Judge Moore for complainants, Barbara E. Hume deposes and says, as follows:

I am one of the complainants in this suit, and the granddaughter of the late Benjamin Berry, sr., of Prince George's County, Md. I was in my sixth year when my father, Benjamin Berry, jr., died. I have known Mr. Beale all my life. Mr. Beale's wife was my half sister. I have 36 slaves on the list that I knew personally; their names were as follows: Townley Johnson, Notley Shaw, Mina, his wife and five children, named respectively, Gassaway, Melvilla, Jacob, Antonel & Prudence; Mary, Liddie, Lucy and two children, Manerva and Henry, Tom, Washington, Stephen, Dennis, Columbus, Hillery, Jennie, Cornelia, Polly, Lemuel, Albey, and three children—I don't exactly remember the children, they were boys and small—Rachel, Sophia, George,

73 Nancey, Prussia, James West, Hannah, Frank, and Ben. These are all that I recollect and knew personally. There were some old ones. I believe they died. The slaves, all that I have mentioned, were from my grandfather's estate, Benjamin Berry. The farm was well stocked; everything that was needed for a farm. I can't tell. I recollect the carriage horses, and the house was well furnished. I can't how many ploughs, &c. My mother moved up to Washington in the fall of 1828. Mr. Beall married my half sister in 1829, after my mother moved up here. I married in 1833. I was then living at Mr. Beale's, and was married there. I married before my mother died. She died in 1857. After my grandfather's death, on the 18th of December, 1827, the property commenced to go. It went by degrees. From 1828 to the summer of 1830, everything was spent, except some old negroes. They were sold by my mother and Mr. Beale.

74 (Mr. McPherson objects to any testimony given by this witness as to any transactions with Mr. Beale, or anything said or done by him.)

My father had a valuable library and a thousand dollars' worth of silver plate. Mr. Beale had the whole control, and nothing could be sold without his approbation. My mother had the greatest confidence in him. He and my mother sold a portion of the negroes to buy the house here, on Tenth street, of old Mr. John McLeod, where she lived, and a square of ground near the Northern Liberty market-house, bordering on Massachusetts avenue and New York avenue and 9th and 10th streets. My mother moved in this house in the fall of 1828, and remained until the summer of 1830. She then left the city and went down to the farm, and remained there until it was sold, I think, in 1855, or 1856. She never occupied the house on 10th street after that. Mr. Beale sold the house and everything there to his brother George,

75 and, I suppose, spent the proceeds. I never had any settlement with Mr. Beale at all about the wasted property, nor was there ever any made in any court of the interest that my sister and I had under that deed that I am aware of. The name of my sister that died was named Rusia Rosalie Berry. She died on the 24th of May, 1860. Mr. Beale paid me $3,000, from the farm that was sold, of my sister's portion. That did not embrace any of the property that I have sued for here. This $3,000 was a payment to me and my sister, Mrs. Crosby. This was all I ever received from Mr. Beale on account of my sister—$1,500 apiece.

Question. Did you ever call upon Mr. Beale to settle up his trusteeship with you and your sister under that deed; and if so, how often?

(Objected to as not admissable.)

Ans. I called on him repeatedly. I told him my situation, and told him it was very destitute. He did not give me any money, and he never made any settlement. He made a great many promises,

76 and that is all. Three or four years before his death, most every time I saw him, I asked him for a settlement, and told him my inability to live. The reason I never instituted this suit before was he made so many promises from time to time that he would settle. He never made me any payments at all outside of the $3,000 that I have spoken of.

Cross-examined by Mr. McPherson:

My husband received my share of the proceeds of the sale of farm in 1836. Mr. Beall never paid me anything after that. I paid Mr. Beall, after the farm was sold, $1,500 for my board, and my two sisters paid

him $750 each for board, making $3,000 he got out of the landed estate. I never borrowed any money from Mr. Beall. I am sure of that. He never gave me anything except what was due from my sister, and he paid me from time to time in driblets. He did not finish paying
77 that until just before his death. The real estate was sold by commissioners appointed by the court. Mr. Brooks and Mr. Magruder paid my husband in person my portion. I heard that my uncle John E. Berry filed a bill to have Mr. Beale removed from the office of trustee. I think he was defeated. My husband died in 1842. I never was present when any of the negroes were sold. They were brought up from time to time from the farm to the house on Tenth street, and locked up there until they sent for a trader. I never saw any money paid by the traders for them. I never was present when a bargain was made for any one of them. My mother had some negroes which came through the Lane estate, and were made over to my half brother and half sister, James J. Forbes and Elizabeth J. Forbes. I believe they were sold too. I asked my mother if she sold them, and she told me she did not. I heard that Mr. Beale accused my
78 mother of selling them. I never got anything that came through the Lane estate. That came before my father was married to my mother. I never got anything but what came through the Berry estate. My grandmother Lane was very wealthy. the conversations I had with Mr. Beale no one was present. He never talked before third persons unless they were interested. I cannot name any one that was present at any one of those conversations. Possibly my sister, Mrs. Crosby, was; I don't know. These conversations occur'ed most every time I saw him. I told him most every week when I saw him that it was high time to make the settlement. I always believed that Mr. Beale got part of the money that the personal property sold for, and kept it. I thought that Mr. Beale had not been as honest as he should
79 be in this transaction. I think it about as base a thing as a man could be guilty of who was entrusted with orphan's property, to sell it and put the money in his own pocket. I very often spoke to Mr. Beale on this subject—almost every time I saw him. My husband thought Mr. Beale *done* very wrong. He was himself a lawyer. Mr. Hume spoke in his life-time of bringing a suit, and asked me to join him, and I told him it was no use, as Mr. Beall was poor, and we could make nothing out of him at that time. This was in 1834 or 1835. After my marriage I lived here until 1837, and remained there three years, and then we returned to Washington. Mr. Hume went abroad in 1841, I think, and died in China in 1842. After Mr. Hume's death I taught school in various places. At one time I held clerkship here. I went to live with my mother three or four years before she died. My mother married Mr. Ferguson in 1843. I occasionally wrote to Mr. Beale,
80 and he answered *them*. Mr. Beale, in his letters, never spoke anything of the wasted property. I never wrote to him about any of it except some servants that Otho Beall bought, and Mr. Beale (for me) brought suit to recover them. They were some of the property of the Berry estate. The letter herewith shown me, and marked Exhibit B E. H. No. 1, appears to be in my handwriting.

Question. Did you write a letter to Miss Lucie Crosby, of which a copy is now shown you?

(Objected to.)

Answer. I don't recollect anything of it. I don't recollect of using that language, besides it is not in my handwriting. I don't believe I wrote this letter in that language. The letter is herewith marked and filed as Exhibit B. E. H. No. 2.

(The paper herewith marked and filed as Exhibit B. E. H. No. 3, is shown to witness, who says, "It is in my handwriting."

(All three of the letters objected to by Judge Moore.)

Question. Did you and Mr. Hume ever appoint Mr. Beale your
81 attorney to settle with Otho Beall and John E. Berry, ex's of Benjamin Berry, for a legacy left to you, and receive the amount of the money and the property by a deed which I now show you, purporting to be signed by E. J. Hume and yourself, and witnessed by John E. Bowie?

Answer. I did not.

Question. Was the paper now shown you signed by yourself and your husband, or either of you?

Answer. No, sir; it was not. I don't know anything about it.

(The said paper is herewith marked and filed as Exhibit B. E. H. No. 4.)

(Judge Moore objects to the question and the introduction of the instrument.)

Mr. Hume used to lend Mr. Beale money and supercede his debts for him. Mr. Beale never paid me any of the money he got from Mr. Douglas; he took me up there several times to get the money but did not get it.

Adjourned.

Cross-examination by McPherson, for def't, resumed:

I have said I never got any money from Mr. Beale myself, col-
82 lected from the real estate, but was collected by my husband. The paper now shown me is not signed by me. I received no moneys under this paper.

(The said paper is hereto annexed and filed and marked Exhibit R. B.)

The paper now shown me and marked, Exhibit J. J. J., I don't think it is in my handwriting.

(Objected to by Judge Moore, for complainants.)

Question. Are you aware that in the year 1829 it was reported that Mrs. Eleanor Berry had married Col. Owens, of Kentucky?

(Objected to.)

Answer. I have no knowledge of having heard it.

Question. Were you not examined in a chancery suit in Prince George's County upon that subject?

Answer. No, sir; I never heard it reported that Mrs. Berry had married Col. Owens. Mrs. Berry left this city in 1830; where she went I don't know. I was at boarding-school at that time. I was the administratrix of Miss Lucia Berry, otherwise Russia Rosalie. She died 24th of May, 1860. I collected, altogether, about $3,000 on account
83 of my said sister's estate from Mr. Beale. This is the same $3,000 that I spoke of in my examination-in-chief, and that divided between my sister, Mrs. Crosby, and myself. I was born on the 28th of February, 1818. There was a suit at Marlboro, in Prince George's County, by my uncle, John E. Berry, to remove Mr. Beale, as trustee, on account of the wasted property. Mr. Beale took down Mr. Cox to argue the suit, and it was decided in favor of Mr. Beale. This suit was instituted without my knowledge or consent.

BARBARA E. HUME.

Sworn and subscribed before me, this 6th of September, 1867.

JOHN J. JOHNSON, *Examiner.*

84 Testimony of Hanson Brooks for compl'ts.

HANSON BROOKS, being sworn, deposes and says, in answer to questions put by Judge Moore:

I am 64 years of age. I live in this city. I knew Mr. Robert Beale, in his life-time. I was a slave when I first knew Mr. Beale, and belonged to old Mr. Benjamin Berry, grandfather to Mrs. Crosby and Mrs. Hume. I first made the acquaintance of Mr. Beale four or five years before he married. He use' to visit Mr. Benjamin Berry's house, grandfather of the complainants. He was there most every week. He use' to attend to the business of Mr. Berry. Mr. Berry furnished him with a horse to attend to his business. When I first knew Mr. Beale he was entirely without means. He was a smart man but he was just commencing the world. The son of old Mr. Berry and the father of these complainants, died before Mr. Beale was in the habit of visiting there much, and before Mr. Beale done business for the old gentleman. Mr. Beale was not married when he was selected as guardian of the children. Mr. Beale was there, transacting business for the old gentleman, before he was married. The property at the time of the death of the complainants' father belonged to the grandfather, old Mr. Berry, and he selected a wealthy gentleman to take charge of the property and to be trustee for the children, named Thomas Berry. Mr. Thomas Berry was not made trustee. Mr. Benjamin Berry was an old man and easily pursuaded and was over pursuaded, and Mr. Beale was made guardian and trustee over the property.

85

I don't know the quantity of slaves that were on the farm, but there were enough for any one farm. I don't know who sold them but I know they were all sold. I don't remember the names now of the slaves. There must have been at least 40 or 50 slaves on the farm. There were plenty of horses and everything on the farm. He was rich and it was all there when the deed of trust was given. I was house servant and remained house servant until the old man's death and then I left the family. I think Mr. Beale wrote the deed of trust. After the deed of trust was given, Mr. Beale had the management and control of the farm and everything that I have spoken of on the farm. The slaves were sold at different times, one and two at a time. They sold all the young ones first. As soon as the deed of trust was given the selling commenced, one and two at a time, and trading them away for horses. Sold all, old and young, and did not leave one to tell the tale.

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The slaves were generally sold to traders. One or two old ones were sold to the farmers. The old ones were disposed of about Maryland. I never saw any traders on the farm looking after them. They were not sold in that way. They were picked off one and two at a time; that is sent to a place where the trader could get them. Old Mr. Berry lived a long time after the young man died. I lived some 8 or 10 miles from the farm where young Mr. Berry died. I waited on the young man during his sickness and attended to him till he died. After the death of old Mr. Berry, I went with one of his sons, and then I went with Mr. Mitchell along Old Fields, and then I came here to this city. I have been in this city 33, or 34, or 35 years, somewhere about that time. I knew Mr. Beale up to the time of his death. Mr. Beale was a lawyer by profession.

Ques. Did Mr. Beale accumulate property rapidly after he got this property into his own hands or did he continue in destitute circumstances?

(Objected to.)

88 Answer. After he got the property in his own hands he was like the green bay tree by the river of water. He spreaded out—he got everything he wanted. I don't know of any property purchased in the city by Mr. Beale after he came here. I read and write.

Cross-examined by Mr. McPherson:

The complainants taught me to read and write. After the deed of trust was given, Mr. Beale had control as a master over everything, to sell or not to sell, as he pleased. If he chose to do anything she could not stop him. I never saw him do anything, because I was not present, but I know he disposed of all the property. I never saw him take away any of the property. I *mean* saw him sell any and I never saw him receive any money for it. The only way that I know he sold the slaves was that I missed them, and as they could not be sold
89 by law without his consent, I believe he sold them. I know it must have been done by his consent, because nobody else could have done it. He was the guardian of the children. Before Mrs. Berry moved to Washington she lived in very handsome style and had plenty of everything. She was rich. After living awhile in Washington she went back to the farm and staid a little while. There were some few old slaves and some horses and other stock when she went back, and then I think the farm was rented, and she then came back to the city and lived here until she died. I did not see Mr. Beale write the deed of trust but it came under my knowledge when it was done.

Re-direct:

Mrs. Berry kept up that fine style about one year after Mr. Beale got possession of the property and after that she became poor.

HANSON BROOKS.

Sworn to and subscribed before me this 2d day of September, 1867.

JNO. J. JOHNSON,
*Examiner.*

90 Deposition of Thomas N. Brashears for complainants.

THOMAS N. BRASHEARS, being sworn, deposes and says as follows, in answer to questions put by Judge Moore:

I was acquainted with Robert Beale in his life-time. I first made his acquaintance in 1823 or 1824. I was quite a youth, and he was a young man. I lived in Prince George's County when I first became acquainted with Robert Beale. I lived on the farm, in Prince George's County, Maryland, where Mrs. Crosby and Mrs. Hume were born. I knew Benjamin Berry, the grandfather of the complainants. I knew their father also. His name was Benjamin Berry. I recollect the time when Robert Beale was married. I don't recollect the date, but can give it. His wife was the half-sister of the complainants'. Mr. Beale was living in this city when I first made his acquaintance. He would stop in the country at times, but he lived here in this city. I think I was
91 living at Annapolis, when Mr. Beale married. I was either living at Annapolis or here. I am not positive. My father lived on the farm. Whilst my father superintended the farm for Mrs. Berry, I have often seen Mr. Beale there. My father lived there before Mr. Berry's death, and after, too. At the death of Mr. Berry, and long after his death, the farm was well stocked with every description of stock. I cannot give it by item. I remember there were a great many slaves on the farm at the time, but I can't remember the number. I will give

the names of as many as I can recollect now, as follows: Townly Johnson and his family—the boy I recollect well, named Albert—the girls I don't recollect—I know he had several children; Notley Shaw and his family—I don't remember the number of his family; Rachel, the house servant; carriage-driver named Ben—I knew him well; a colored boy, named Tom—I remember him very well; a well grown-girl, named Jennie, and her mother—I forget her mother's name; an old woman, named Liddie, who had several daughters. There were a good
92 many servants on the farm, whose names I have lost sight of. There were a good many slaves on the farm at the time, but I cannot give the number. There was the family of old man West, whom I had forgotten. Mr. Robert Beale superintended everything about the farm. I don't know, of my own knowledge, whether Mr. Beale sold any of the slaves or not. All I know is what I heard from my father. Mr. Beale was very often there. He had full charge, and superintended the property on the farm. I do not know of my own knowledge, that Mr. Beale sold anything off the farm. I saw him and his brother-in-law take away two slaves off the farm. I don't know what he did with them. I remember well when the farm was rented, and when it was sold. The property and stock on the farm, of which I have spoken, all disappeared gradually—it was not taken off suddenly; and finally,
93 when all the stock was taken off, the farm was rented. [About the time Mr. Beale got possession of this property we regarded him a very poor man. I don't believe he owned anything. I never heard of his owning anything, and I knew him very well.]

(Mr. McPherson objects to all enclosed.)

I continued to know Mr. Beale up to the time of his death. I knew him when I saw him, and had a speaking acquaintance with him.

Question. Did Mr. Beale accumulate property rapidly after that period, and was he a rich man when he died?

(Objected to by Mr. McPherson.)

Ans. I did not know amount of property he owned at the time I am speaking. The first I did know that he owned was the house he he bought where he lived.

Cross-examined by Mr. McPherson:

94 The two negroes that Mr. Beale and his brother-in-law took away were young. I don't recollect their names, but can find out if necessary. It was long before Townley Johnson was sold. There were servants on the place that came from the Lane family and were not included in the Berry family. Mrs. Berry's mother was a Lane. Townley Johnson's wife came through that family, and some others. It has been upwards of forty years ago, and I cannot recollect. The boy Henry did not belong to the Berry family. I do not remember the boy Lewis. I left the place, came to this city, and from here I went to Annapolis and remained there *often* and on about a year, and then came back to Washington. I think Mr. Beale was married while I was in Annapolis. I never returned to the farm after I left it. My father lived adjoining this farm, and I was frequently there. It was after the death of Mr. Berry, and I think after Mr. Beale's marriage that
95 he exercised the control over the farm that I have spoken of. Most of the slaves were young; very few of them were old. The old ones were left till the last. I think after Mrs. Berry came to Washington to live, she went again and lived on the farm.

Question. What acts of control or superintendence do you know of your own knowledge, Mr. Beale exercised over the property?

Answer. I was not present and never seen it. I never saw any of the property carried away, except the two negroes I have spoken of. I recollect when Townley Johnson was taken away and sold. I also remember when Ben was taken away. I don't know who sold either of them. I think Lackie bought Johnson. I don't know whether Mr. Beale was on the farm when Ben was taken away.

96 Re-direct by Judge Moore:

The names of all the slaves I have mentioned in my examination-in-chief were all of the Berry estate. It seemed to me the property was pretty general' on the travel from the time Mrs. Berry moved to the city until it was all sold.

Question. What was Townley Johnson's character—whether he was a faithful servant or otherwise?

Answer. He was regarded as a first-class servant. They had the best servants on that farm of any farm in the country. Townley's general character was always good. I never heard anything
97 against him. There was not a colored man in the country better thought of than Townley.

THOS. N. BRASHEARS.

Sworn to and subscribed before me this 2d day of September, 1867.
JNO. J. JOHNSON, *Examiner.*

98 *Order dismissing bill.—Filed Mar.* 25, 1869.

Supreme court of the District of Columbia, sitting in equity, Mr. Justice Olin, presiding.

BARBARA E. HUME & AMANDA E. CROSBY
*vs.*
MARY D. BEALE, EXECUTRIX, &C. } 919. Eq. doc. 8.

This cause coming on to be heard upon the bill, answer, and testimony, and argument of the counsel for both parties being heard, it is thereupon, upon consideration thereof, ordered, this 25th day of March, 1869, that the bill and the matters thereof be, and hereby are, dismissed, with costs to the complainants.

By the court.

HUME ET AL.
*vs.* } 919. Equity docket 8.
BEALE, EX'X.

Upon the motion of Messrs. Moore & Bright, solicitors for the complainants, an appeal on behalf of the complainants, to the court in banc is hereby entered.

By the clerk.

Filed April 14, 1869.

99 *Proceedings before the supreme court of the District of Columbia, in general term, commencing on the 1st Monday, 3d day of January,* 1870.

MONDAY, *January 3d,* 1870.

By order of the chief justice the opening of the court is proclaimed by the marshal; present, the Chief Justice Cartter, and Justices Olin, Fisher, and Wylie.

SATURDAY, *March 5th*, 1870.

Session resumed pursuant to adjournment; present, Chief Justice Cartter, and Justices Olin, Fisher, and Wylie.

BARBARA E. HUME AND AMANDA EUGENIA Crosby, pl'ffs,
*vs.*
MARY D. BEALE, EXECUTRIX OF THE ESTATE of Robert Beale.
} 919. Eq. doc. 8.

This cause having been heard upon the record of the equity
100 court, and argument on both sides, and fully understood, it is therefore ordered, adjudged, and decreed, that the decree of the equity court of March 25th, 1869, dismissing the bill, be and the same is in all things affirmed with costs.

Chief Justice Cartter and Wylie dissenting.

And from this decree the plaintiffs pray an appeal in open court, to the Supreme Court of the United States, which is allowed.

101 *Clerk's certificate.*

DISTRICT OF COLUMBIA, *to wit*:

I, Return J. Meigs, clerk of the supreme court of the said district, hereby certify that originals, of which the foregoing 100 pages of paper-writings are true and complete copies, are on file and of record in the clerk's office of said court; and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled Barbara E. Hume and Amanda Eugenie Crosby, pl'ffs, vs. Mary D. Beale, executrix of the estate of Robert Beale. No. 919. Equity docket 9.

In testimony whereof I hereto subscribe my name and affix the seal of said court, this 17th day of November, 1871.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 406. Barbara E. Hume and Eugenia Crosby, Appellants, vs. Mary D. Beale, ex'tr'x of Robert Beale, dec'd. Dist. of Columbia sup. court. Filed 27th November, 1871.

[Exhibit B. E. H., No. 1.]

BARBARA E. HUME AND AMANDA EUGENIA CROSBY, APPELLANTS,

*vs.*

MARY D. BEALE'S EX'R, AND OTHERS, APPELLEES.

June 5th, 1846.

R. BEALE, ESQ.:

Your note has been received in which you refuse to see me again, and, strange to say, you have charged me with falsehood, duplicity, and treachery.

What crime have I committed that you should apply such epithets to my name? Thank God, I have an approving conscience, one that can say I have never, my dear brother, wronged you in thought or word. I always spoke of you in the most affectionate manner. I admit I have been in error, but am ready to make reparation. Do n't judge me so harshly. You have wronged me. Forgive the innocent. I truly repeat, my dear brother, speak kindly to me, and, for God's sake, do n't cast me on the cold world without a cent.

I will go to Baltimore, stay there in retirement: time will show you that I am not what you consider me. I will not stay here longer. If you will not let Ferguson pay my board, my clothes must of course be liable. Take the breast-pin and guitar—all, everything. Grief will soon do its work. Soon a lonely grave will be the only mark that I shall leave behind me. I wish to see you once more. I shall be then better satisfied. Let me see you one short hour is all I ask. Do n't refuse me this small favor. If you can sympathize with the distressed, for God's sake, let me see you once more. Please let Mr. Ferguson come

down and take me to the country: I will not stay longer if I have to walk out there. I have not a friend in the world. God is my refuge: I will never despair. He has promised never to leave or forsake us. In my misfortune if I thought I had your forgiveness, I should be content. Please let Ferguson pay my board, is all I ask. I am ready to go at any time. Send him down to see me immediately. Let me go to Baltimore, perhaps I can get something to do: for here I cannot stay any longer.

No money or friends! God's support in this hour of affliction is all I pray for. B.

[Exhibit B. E. H., No. 3.]

BARBARA HUME AND AMANDA E. CROSBY

*vs.*

MARY D. BEALE, *Executrix, &c.*

NASHVILLE, *December* 1, 1837.

DEAR Mr. BEALE: You will oblige me very much if you can spare the time to go to Marlboro' this court, for the purpose of getting the money, or a part of it, that is due me. I am very much in want at this time. I would not trouble you, but necessity is the first law of nature; therefore I was compelled to address you. My circumstances are such that I cannot do without a little money. Mr. Hume is out of employment entirely; is very dissipated; indeed, no person will encourage him as a teacher, or rather he is too lazy to exert himself for a support.

We are all living with his mother; she is not able to keep us, and can hardly get along with her own family. I cannot stay here, the family think very hard of it indeed. I am a stranger here, no one to aid me in the most trifling matter. If I was where I was known, I could get along some how or other. I should like to be with my relations. I think Otho Beale would help me if he knew my situation as being a distressing one. I should like to get in a school as an assistant teacher, so as I could be making a living for myself and children. I would exert myself to the utmost to get along. I have said enough of this matter for you to judge of my situation. I hope sister and the children are well, together with my dear brother. I saw his arrival announced in the Banner of this place. I hope he is in a thriving state. I received a letter from Amanda and Lucia about a fortnight since; they were

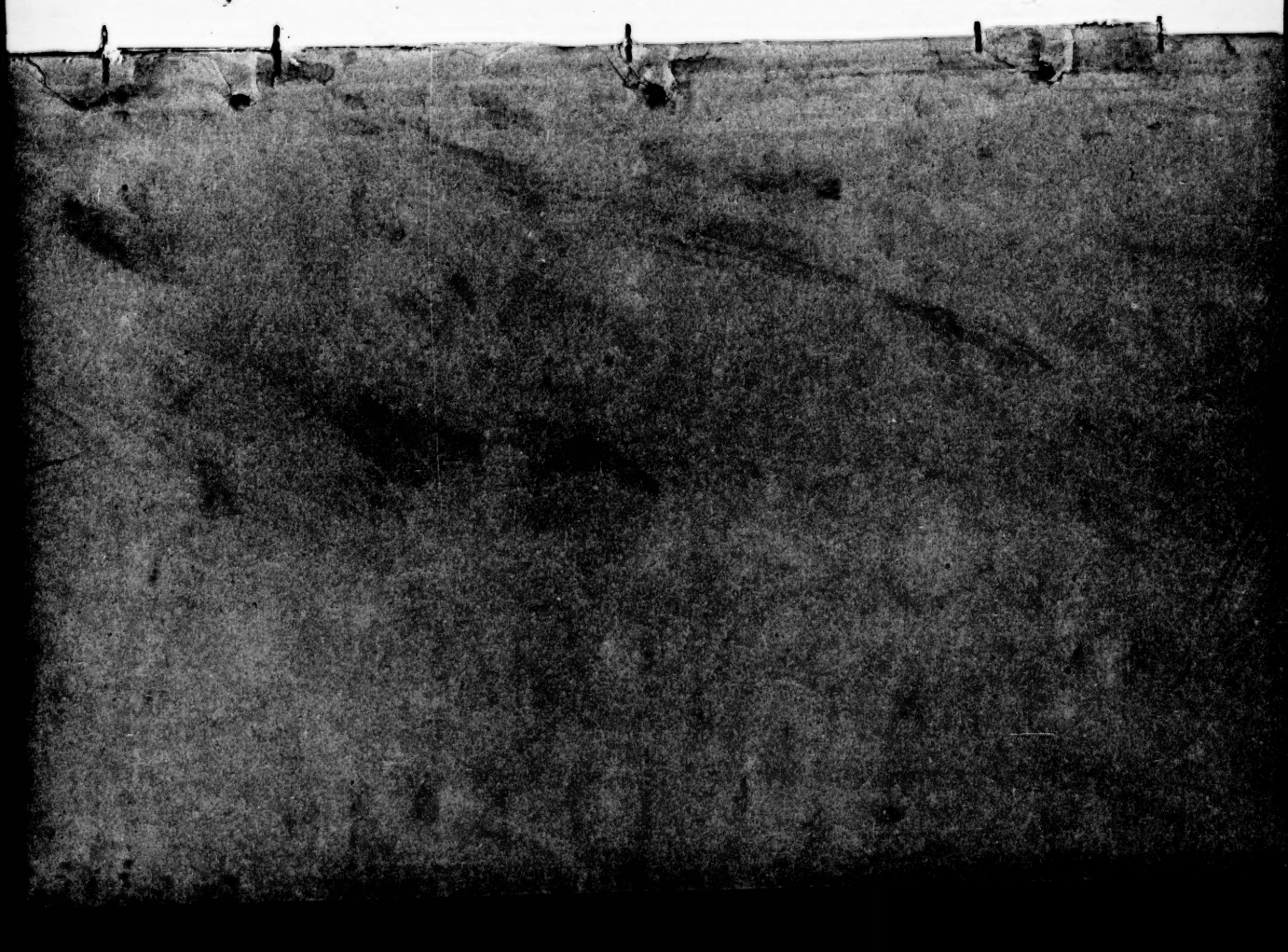
well and seemed to like their new abode very much, and being well pleased with their new associates. I wish I had never have left the city, and have taken your good advice. Oh! if I could have forseen what misery has befallen me; but, Mr. Beale, I thought Mr. H. would reform. I caught at every straw, as a person when he is drowning. I thought for the best, always looked at the bright side. If I could only get to the city, I would put up with anything, and make the best of my situation. I could take in sewing, or be some person's housekeeper, if nothing else; for here I cannot stay. I must seek out some asylum for repose. Alfred Hume will not do anything for me; he cares only for number one. I have never had such feelings before, utterly dependent on these heartless Humes.

I cannot say any more. You can see what my feelings are. Do answer this, and please to attend to the request I have made of you about getting the money.

Give my best love to sister and brother; kiss Forbes and the baby for their aunty, and accept a great share of love from

Your true friend,

BARBARA ELLEN.



# Supreme Court of the United States.

DECEMBER TERM, 1872.

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**No. 171.**

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## BARBARA E. HUME and AMANDA EUGENIA CROSBY, Appellants,

**vs.**

## Mary D. Beale's Ex'r, and others, Appellees.

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## BRIEF FOR APPELLANTS.

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MOORE & BRIGHT,
JAMES HUGHES, } ATTORNEYS FOR APPELLANTS.

WASHINGTON, D. C.
W. H. MOORE, PRINTER, 511 ELEVENTH STREET.
1873.

# Supreme Court of the United States.

**No. 171.**

BARBARA E. HUME AND AMANDA EUGENIA CROSBY, APPELLANTS,

*vs.*

MARY D. BEALE'S EX'R, AND OTHERS, APPELLEES.

## *Brief for Appellants.*

This suit was brought in the Supreme Court of the District of Columbia, on the 22d day of April, 1867, against Mary D. Beale, executrix of Robert Beale, deceased. It was tried in said court on the pleadings and proof, and the bill was dismissed. The appellants appealed from that decision to the court in general term, and there the decree dismissing the bill was affirmed by a divided court. From that decree, affirming the decree of the court in special term, the appellants appeal to this court. Pending the case in this court one of the complainants, namely, Barbara E. Hume, died, and her death is suggested on the record, and the appeal is prosecuted by the surviving co-complainant, Crosby. Pending the case in this court, the defendant, Mary D. Beale, also died, and the case stands revived against her legal representatives.

The suit was brought to charge the estate of Robert Beale, deceased, with a large amount of property, real, personal, and mixed, which came to his hands in trust for the appellants, under and by virtue of a deed of trust

made by one Benjamin Berry, of the County of Prince George's, and State of Maryland; the said Benjamin Berry being the grandfather of appellants. Said deed of trust was made the 4th day of March, 1826, and on that day was duly admitted to record, as will be seen by the record, marked exhibit A, on page 3d of said record. Besides a prayer for general relief in the bill, there is a special prayer for a reference of the case to an auditor to settle the accounts with the trustee.

Several questions are involved in the objections interposed by the appellees to the relief sought by the appellants.

1. That the deed of trust made by the said Benjamin Berry, invested the said Eleanor Berry with full power to dispose of the property, and that she did waste it, and that said Robert Beale is not liable for such waste. 2. That by the terms of the deed of trust, the trust was determined upon the marriage of Eleanor Berry and Barbara E. Berry, which occurred about the years 1830 and 1833, respectively, (see page 8 of the printed record,) and it is insisted by the appellee that by reason of the said marriages, and the lapse of time therefrom, that the demand of appellants is too stale to be enforced. The appellees further rely on a record of what purports to be a suit brought in the high court of chancery in Maryland, by one John E. Berry, who represented himself as the uncle and next friend of the appellants. (See page 8, of the record, in which said record is set up in the answer of appellees.) In addition to the foregoing grounds of defence, the lapse of time and statute of limitations are both pleaded and relied on in the answer of the appellees in the court below.

The decree made in the court below dismissed the bill generally, without specifying or indicating the grounds upon which it was dismissed. In this state of the case the counsel for the appellants, for a succinct statement of

the questions involved, can only give those which were made in the record in the court below:

First. That no property of any kind ever came to his hands (Beale's hands) as trustee, that he has not fully accounted for.

Second. That Eleanor Berry, under the deed of trust, had the authority and right to control and dispose of the property, and did dispose of it.

Third. That the suit brought in the high court of chancery, in Maryland, by John E. Berry, as the next friend of the appellants, is a bar to the rights of the appellants in this suit.

Fourth. That the demand of the appellants, if any they had, is cut off by lapse of time and the statute of limitations.

ASSIGNMENT OF ERRORS BY APPELLANTS' COUNSEL.

The appellants, by their counsel, assign for error—

1. That the Court below erred in its decree dismissing the bill.

2. That neither one of the foregoing enumerated grounds, nor all of them together, constituted a sufficient bar to the appellants' right to the relief sought in their said bill, and the decree of the Court below dismissing said bill was therefore erroneous.

ARGUMENT.

The first and, as we conceive, main question for this Court to determine is, whether the claim of the appellants is barred by the lapse of time or the statute of limitations. We insist that neither can be successfully applied to this case. The trust is an *express trust*. The trustee, Robert Beale, was the brother-in-law of the appellants, and when he took possession of their property they were of tender years. It is not pretended that any settlement of Mr. Beale's trusteeship was ever made. No account was ever rendered to

the Court, or anywhere else, by said Beale. The evidence shows that a large amount of personal property came to his hands, and some forty or fifty slaves. The deed of trust vested the legal title to all of the property in him, and the said Eleanor Berry had nothing but the *use* under said deed. And it is very apparent that the said Beale, taking advantage of the near relationship which existed between him and the appellants, and the advantage which it was calculated to inspire, he appropriated a large portion of that property to his own use and profit, and *never did in any way account for it.* Moreover, Beale, during his lifetime, and up to within a very short period of his death, acknowledged his indebtedness to them and promised to pay them.

Under such a state of facts, we earnestly insist that neither the lapse of time nor statute of limitations can avail the appellees anything. We think the principle settled by this Court in the case of Michoud *vs.* Girod, 4 Howard (Curtis), top page 197; and this case, now before the Court, in many of its features is very similar to the one above referred to. In that case the Court say:

"We can only see in their conduct the fears and forbearance of dependent relatives, far distant from the scenes of the transactions of which they complain, desirous of having what was due to them and suspecting it had been withheld, but unwilling to believe that they had been wronged by brothers with whom they had been associated in a common interest by another brother who was dead. In a case of actual fraud courts of equity give relief after a long lapse of time, much longer than has passed since the executors in this instance purchased their testator's estate. In general, length of time is no bar to a trust clearly established to have once existed; and where fraud is imputed and proved length of time ought not to exclude relief."

See *Michoud* vs. *Girod*, 4 Howard (Curtis), top page 197, 198, and cases there cited.

The case under consideration, it will be borne in mind, is one where two dependent females, sisters-in-law to the trustee, looked to him, and leaned upon him, and trusted him to take care of the estate which had been left them by their grandfather. They, of course, were reluctant to believe that their brother-in-law would wrong them, and his repeated promises doubtless kept them from calling him to a settlement in court long ago.

As to the property which came to the hands of Beale as trustee, see the deposition of Townley Johnson beginning on page 18 of the printed record. This witness, as will be seen, had perfect knowledge of the beginning of Mr. Beale's career with the trust property, and the attention of the Court is particularly invited to his deposition. Also, the deposition of Hanson Brooks, beginning on page 25 of the printed record. The whole of these two depositions are especially referred to, that this Court may see what an amount of property Beale got possession of and how the same was disposed of. Also, the deposition of Thomas Brashears, beginning on page 26 of the printed record.

As to Mr. Beale's acknowledgment of his indebtedness to the appellants and his promises to pay them, see particularly the deposition of John Douglass, on page 18 of the printed record.

We must assume that it is clearly established by the depositions referred to, and by the schedule appended to the deed of trust, that a very large and valuable estate came to the hands of the said trustee, and that he never did render any account of it; that he recognized up to within one year of his death his indebtedness to the appellants.

The bill filed in the Court below seeks to have an account of his trusteeship taken before the auditor, and to compel payment of the amount found due from him as trustee. This the Court certainly will do, unless it should be found that something has intervened to absolve Mr.

Beale from his liability as such trustee. It will be seen by the proceedings in the suit brought in the name of John E. Berry, as next friend of appellants, that the said John E. Berry had no authority whatever to institute such suit; that the appellants were minors and neither gave any consent to the prosecution of such suit, nor, indeed, they could not have done so. They, with the property, were in the custody of the said Robert Beale, and, by his answer, he denies the right of said John E. Berry to interfere with the appellants or their property. (See pages 11 and 13 of the printed record.) This proceeding is relied on as a bar to the rights of the appellants. No settlement or accounting was had either in that proceeding or any other. And thus, as the case stands, the appellants have been deprived of their property—a large amount—and are left penniless in the world.

We maintain, therefore, that neither in the facts in this case, nor by any authority of law, does it appear that there is any excuse for the course pursued by the said trustee towards the appellants. We deem it unnecessary to multiply authorities on the only question which really is involved in the case as it now stands—that is, the lapse of time and statute of limitations. We are not aware that this Court has at any time departed from the principles laid down in the cases to which we have already referred.

We therefore ask a reversal of the decree of the Court below, and that the cause be remanded to the Court below with instructions to have the account audited and settled with the representatives of said trustee.

MOORE & BRIGHT,
JAMES HUGHES,
*Attorneys for Appellants.*

# In the Supreme Court of the United States.

DECEMBER TERM, 1872.

BARBARA E. HUME ET AL., *Appellant*,
*vs.*
MARY D. BEALE, *Executrix, &c.* } No. 171.

BRIEF FOR DEFENDANT.

This cause comes up by appeal from the Supreme Court of the District of Columbia. The appellants were complainants below, and their bill was dismissed.

*The Bill*

charged that by a deed made on the 14th of March, 1826, one Benjamin Berry, of Prince George's county, Maryland, conveyed to Robert Beale, the defendant's testator, certain lands, negroes, and farm stock, in trust, first for one Eleanor Berry, widow of grantor's son during life or widowhood, and then to be conveyed to the three children of the said Eleanor Berry and the grantor's deceased son; and that the said Robert Beale, in violation of the trust, sold and suffered Mrs. Berry to sell the negroes and personal property, and shared with her the proceeds. That, during Beale's life, the complainants had repeatedly sought a settlement as to the wasted property, but that Mr. Beale, while acknowledging the obligation, had by promises and excuses procrastinated and delayed the same, and died without paying them anything whatever. There is no allegation that any of the trust property remained in the possession of the defendant's testator, at his death, and no prayer for the delivery or conveyance of any part of

it, but only for "settlement of said trusteeship," by which we understand an account of the property wasted, the only property in respect of which any changes are made in the bill.

*The Answer*

denied the breach of trust, and while alleging that the transactions narrated in the bill, so far as they are founded in truth, occurred nearly forty years before, and before respondent was born, and consequently that she could have no personal knowledge of the circumstances, yet set forth a narrative of facts such as is hereinafter established by evidence, which shows that the waste and conversion of the property was committed solely by Eleanor Berry, and that Mr. Beale used his efforts to prevent it, and did finally arrest it, but not until most of the personal property had been made way with. The respondent denies that her father ever made the admissions, promises, and excuses alleged in the bill, or that the complainants ever asserted against him in his lifetime the claim now made or any claim; and she says that it is incredible, if her father had knowledge or notice of any such claim, he should not have given her, his eldest child and executrix, some intimation of the danger to be apprehended from it, which she swears he never did. She also pleads certain special defences, hereinafter more particularly noticed, limitations, former suit and adjudication, &c.

*The Character of this Suit.*

In the brief filed in this case, the suit seems to be considered as founded simply upon the deed of trust, and as claiming an account under and pursuant to that deed. It is said "this suit was brought to charge the estate of Robert Beale, deceased, with a large amount of property, real, personal and mixed, which came to his hands in trust for the appellants, under and by virtue of a deed of trust." Brief, p. 1.

If this be the scheme and purpose of the bill, the short answer is that nothing ever could have come to Beale's hands under and by virtue of the said deed, because by its express terms the property was to be left in the sole and exclusive possession of the *cestuis que trust*, and that Mr. Beale was to hold the legal title, and nothing else, as expressly declared by the deed. And that as no moneys could have been received "under the trust," no bill for an account would lie. In case of an account of moneys *under the trust*, the equity * * * is included under the general equity for enforcement of trusts. Adams' Eq., book 3, chap. 1, tit., account. The only act which the trust in this case required the trustee to perform, was to "convey the unconditional title in fee to all the property, both real and personal, unto the said children." Deed, Record, p. 3.

But the schemes and purposes of the bill were not that so expressed in the brief.

On this point we derive no light from the prayer of the bill, which is one of no definite signification, that the court "will decree and order a settlement of said trusteeship."

The bill charges that by virtue of said deed of trust, a large amount of property came to the hands of Mr. Beale, and that he "*sold and disposed of the same from time to time, and converted the proceeds thereof to his own use, and delayed a settlement, &c.*

Again, "that the said Eleanor Berry, in her lifetime, invested a large amount of the proceeds of said trust property in houses and lots of land, within the corporate limits of the city of Washington, D. C., which the said Robert Beale afterwards sold and put the proceeds into his own pocket and never accounted, &c."

And again, "that the said Robert Beale suffered and permitted and advised the said Eleanor Berry, in her lifetime, to sell, waste and squander the said trust property."

These are all charges of breach of trust; the deed

authorized none of them; if done, the acts charged are in violation of the terms of the trust, and these only could render him liable to account.

We remark here that the complainant's brief (p. 3) alleges that "it is not pretended that any settlement of Mr. Beale's trusteeship was ever made."

If this allegation referred to anything but the "wasted" property, it would be most extraordinary in the face of the averment in the answer, that the trust property, both real and personal, was sold under a decree of court, upon a bill filed by Robert Beale and Eleanor Berry, in 1834, and the proceeds distributed under the order of the court, and the testimony of Miss Hume, that the realty was so sold, and that she had received her share.

From these considerations, and as the brief in conclusion (p. 6) asks that the cause be remanded with instructions to have "the account audited," and as in case of breach of trust, "the trustee must account for what he has or ought to have received with interest," (Adam's Eq., p. 63,) the reasonable view of the complainants' case appears to us to be that it is confined to an account of the personal property alleged to have been sold by or with the connivance of Mr. Beale, and as such we shall consider it.

*The Groundwork of Facts*

is as follows:

Benjamin B. Berry married Eleanor Forbes, a widow, having two children by a former marriage, James Forbes and Elizabeth Forbes. Rec., p. 23.

Berry and his wife resided in Prince George's county, Maryland, about twenty miles southeasterly from Washington, upon a plantation belonging to Benjamin B. Berry's father, Benjamin Berry The plantation was stocked with animals and implements, and on it were a proper number of negroes to work the land. B. B. Berry and wife there

had three children, daughters—Barbara Ellen, Amanda Eugenia, and Rusia Rosalie.

Benjamin B. Berry died prior to or early in 1824. Mrs. Hume, born February 28, 1818, was not six years old when he died. (Rec., pp. 24, 21.) His widow and children continued to reside on the plantation.

On the 14th of March, 1826, Benjamin Berry, the father of Benjamin B. Berry, made the deed of trust set forth in the bill. By it he conveyed to Robert Beale, of Washington city, D. C., the land, servants, and farm stock, already in possession of Mrs. Berry, upon certain specified trusts "*and no other*"; that is to say, "*to retain the legal title* to all the said property during the life and widowhood *of the said Eleanor Berry, and after her death* [*or*] *marriage, until such time as the eldest* [*of the*] *children shall come of age or be married, on which event or events the said Robert Beale shall convey the unconditional title in fee to all the property, both real and personal, unto the said children and their heirs, or such of them as may be living at the time of such conveyance, and to the issue of any such as may be dead, &c.* * * *And the said Robert Beale shall permit the said Eleanor to have and enjoy the sole and exclusive use of all the said property for and during the time in which she shall and may live and remain unmarried, without molestation or hindrance of him, the said Robert Beale, or said Benjamin Berry, or any other person or persons whatsoever.*" (Record, pp. 3, 4.)

On the 18th of December, 1827, Benjamin Berry, the grantor, died. [Rec., p. 22.]

In the fall of 1828 Mrs. Eleanor Berry took up her residence in Washington city, D. C. Rec., p. 22.

In the year 1829 Robert Beale married Elizabeth Forbes, Mrs. Berry's daughter by her first marriage. Rec., p. 22.

In the years 1828 and 1829, that is, after B. Berry's death, and before the year 1830, the waste complained of had been committed, by the sale of nearly all the slaves and farm stock. (See below.)

Early in 1830 Robert Beale filed a bill against Mrs. Berry to prevent her from further disposing of the personal property. Rec., p. 14.

And immediately thereafter, in 1830, under or in consequence of some order of court, took possession of the land and what remained of the personal property. Rec., p. 14.

In the summer of 1830 Mrs. Berry left her house in Washington city and never returned to it. Townly Johnson says, (Rec. 20, fol. 66,) "she went off travelling;" Mrs. Hume says, "where she went I do not know." (Rec. p. 24, fol. 82.) [No doubt, from the next paragraph below, she went with her husband, Col. Owings, whom she had married, but secretly to avoid the forfeiture of her estate.]

In December, 1830, these complainants, and their sister, now deceased, by their uncle and next friend, John E. Berry, filed a bill against Robert Beale and Eleanor Berry, and Thos. Owings, whom it was alleged she had married, setting forth the sale of all the personal property and waste of the proceeds, and praying the removal of Beale, as trustee, and an account, &c. Mrs. Berry was not served with process, [being "off travelling."] A receiver was appointed and gave bond. Beale appeared and answered, admitted that most of the personal property had been made way with, but alleged this was done solely by Mrs. Berry, and that when he heard of her conduct he had tried to prevent it, and finally, after legal proceedings, had taken possession of the land and the remains of the personal property to preserve it. The cause was heard and the bill dismissed. Rec. pp. 10 to 16.

In February, 1833, Barbara Ellen married E. L. Hume. Rec., p. 1.

In 1834, the trust property was sold under a decree of court, and each of the three daughters received $3,000, besides, paying her expenses up to that time. Rec., pp. 22, 23, 24.

In 1839, Mrs. Hume attained the age of 21 years. Rec., p. 24.

In September, 1842, Mr. Hume died. Rec., p. 1.

In 1843, Mrs. Eleanor Berry married E. D. Ferguson. Rec., p. 1.

In November, 1844, Amanda Eugenia married Edward R. Crosby. Rec., p. 1.

In January, 1857, Mrs. Eleanor Ferguson [Berry] died. Rec., p. 1.

In September, 1857, Mr. Crosby died. Rec., p. 1.

In May, 1860, Miss Rusia Rosalie Berry died unmarried. Mrs. Hume became her administratrix Rec., p. 24.

In November, 1866, Robert Beale died. Rec., p. 2.

In April, 1867, this suit was brought. Since it was brought, Mrs. Hume, complainant, and Miss Mary D. Beale, executrix, defendant, have died.

I.

*The waste and misappropriation of property charged in the bill in this cause occurred prior to* 1830.

Townly Johnson, witness for complainants, says there were only four farm hands (old men and women) and three or four house servants, besides himself, remaining unsold when Mrs. Berry came to Washington [1828]. (Rec. 21, fol. 70.) Mrs. Hume says everything was spent except some old negroes, by the summer of 1830, when Mrs. Berry left the city, and went witness knows not where. (Rec., p. 22, fol. 73; p. 24, fol. 82.) [Mem.: Mrs. B., two or three years *afterwards*, found her way back to the farm.]

In the bill filed by John E. Berry, December, 1830, it is alleged that all the slaves, except the very old ones, had been sold, and the proceeds and stock on the farm wasted. (Rec., p. 11, fol. 35), and in Mr. Beale's answer filed the same month, he states that when he took possession he found only the land, destitute of hands, horses, cattle, stock and implements. (Rec.. p. 14, fol. 47.)

Mrs. Hume testifies that, in 1834, or 1835, she and her husband discussed the propriety of sueing Mr. Beale for

the breach of trust. Rec., p. 23, fol. 79. It must have then been consummated. This was before she received the proceeds of the farm, which was in 1836. Rec., p. 22.

The testimony referred to by appellants as proving Mr. Beale's misconduct, is that of Brooks, Johnson, and Brashears, (brief, p. 5) all of whom left the place prior to 1830. Johnson ran away a year after Mrs. Berry came to Washington, which was in 1828. Rec., p. 20, fol. 68. Brooks left the place "after the death of old Mr. Berry," by which and from the context, we understand immediately after, say in 1828. Rec., p 25, fol. 87. Brashears left the place before Mr. Beal's marriage, which took place in 1829. Rec., 26, fol. 91.

II.

*Mr. Beale had nothing to do with the sales.*

The testimony to establish his participation, is exceedingly vague.

No witness ever saw him sell a slave or bargain for one or receive money for one, or for any other property.

Mr. Hume's only testimony, charging Mr. Beale with selling the slaves, is at p. 22, fol. 74. "Mr. Beale had the whole control, and nothing could be sold without his approbation. My mother had the greatest confidence in him. He and my mother sold a portion of the negroes to buy the house here on tenth street of old Mr. John McLeod, where she lived, and a square of ground near the Northern Liberty market house. * * * I always thought that Mr. Beale got part of the money that the personal property sold for, and kept it. I thought Mr. Beale had not been as honest as he should have been in this transaction." (p. 23.)

Johnson, after testifying in general terms, being pressed on cross-examination, boldly swears that Mr. Beale used to bring down the traders and chase the negroes like rabbits, but in this, he is contradicted both by Mrs.

Hume and her other witnesses, Brashears and Brooks. The latter says "they were not sold in that way. They were picked off one or two at a time, that is, sent to a place where the traders could get them." Rec. p. 25. Mrs. Hume says, "I was never present when any of the negroes were sold. They were brought up from time to time from the farm to the house on Tenth street, (Washington city,) and locked up there until they sent for a trader." Rec., p. 23.

Thomas Brashears lived on the farm. His father was overseer for Mrs. Berry. He lived there, it seems, until after Mrs. Berry moved to Washington. He never saw Mr. Beale exercise any control over the property; never saw him sell any negroes; never saw him take any away, except when Beale and his brother-in-law, Forbes, took two slaves from the farm. [Rec., p. 26, 27.] No doubt these belonged to the Forbes or Lane estate. It is not to be presumed that young Forbes would carry off the Berry negroes, when he had there negroes of his own, as explained below.

But although the negroes were sold thus clandestinely, and Brooks never saw one sold, and says "I don't know who sold them," (Rec., p. 25, fol. 85); yet he is not the less willing to swear that he knows Beale sold them, and this is how he knows it: "The only way that I knew he sold the slaves, was that I missed them, and *as they could not be sold by law without his consent, I believe he sold them. I know it must have been done by his consent, because nobody else could have done it.*" (Rec., p. 26, fol. 89.)

Mrs. Humes has the same idea. She says, "Mr. Beale had the whole control, and *nothing could be sold without his approbation.*" (Rec., p. 22, fol. 74.)

Townley Johnson, speaking of the sales, says: "I have often heard the servants say that they thought Mr. Beale ought to interpose and protect the children." Rec., p. 20. This is entirely inconsistent with the idea that Beale was active in selling the negroes himself.

It is not at all improbable that an idea that Mr. Beale's interference with the Berry negroes may have arisen from some acts of his done in reference to the Lane negroes, which were on the same place. Some of these belonged to his wife and he may have taken some or sold some. Mrs. Berry had much more property than that included in the trust deed. Mrs. Hume says, "my mother had some negroes which came through the Lane estate, and were made over to my half-brother and half-sister, James J. Forbes and Elizabeth J. Forbes. I believe they were sold, too. * * * "My grandmother Lane was very wealthy." [Rec., p. 23, fol. 78]. And the complainants offer evidence to prove that there was fine household furniture, plate, library, &c., at the farm, and that Mrs. Berry lived in very fine style, whereas, besides the land, there was nothing whatever conveyed by the deed of trust, except slaves and farm stock and implements, and all this to a value that could hardly reach $4,000. Negroes, in 1829, did not average $100 apiece. All the negroes conveyed by his trust were 28 in number, and are named in the schedule, but witnesses say there were 40 or 50 in all at the place. So that a large part must have belonged to the Lane estate, to Mrs. Berry and her first children.

## III.

*Was Mr. Beale remiss or negligent of his duty as trustee?*

He was trustee of a mere dry legal estate, and the duties of such trustees are laid down in Hill on trustees as confined to three objects: 1st. To permit the *cestui que trust* to enjoy the estate; 2d. To execute conveyances when necessary; "3d. To defend the title of *cestui que trust* in any court of law or equity, or at any rate to suffer his name to be used for that purpose." Hill on trustees, p. 316–17. It is not his duty to bring suits, but only to allow his name to be used, and this not until security has been given by the *cestui que trust* for costs. (*Ib.*)

And so little of duty has such a trustee towards his *cestui que trust* that it is said such a trustee may purchase the trust property, a fact which makes a radical distinction between him and those who have duties to perform in reference to the trust property. (*Ib.*)

The purpose of the deed was simply that Mr. Beale should hold the *legal title* until the death or marriage of Mrs. Berry, and then to convey it to the children. Not only is this all that the deed imposes on him, but it is *expressly* declared that he has *no other duty* in the premises, and not only that, but that especially he is *not to molest or hinder Mrs. Berry* in the *sole and exclusive* use of the property. Rec., pp. 3, 4.

Under this deed Mrs. Berry could undoubtedly hire out the negroes, or sell her life interest in them, or they might be taken in execution. Mrs. Hume testifies that Mr. Beale at her request brought suit to recover some of the negroes that had been sold; the result is not stated. Rec., p. 23, folio 80.

Again, Mr. Beale resided in Washington, 20 miles distant (his residence is stated in the deed of trust), he was a young man just commencing the practice of the law, and it could not have been expected or intended by the grantor that without any compensation, and without any funds in hand, he should exercise a personal supervision over the property. If he was bound to look after the negroes, so was he bound to look after the farm stock, the horses, hogs, cattle and sheep.

Now, Mrs. Berry had been living in possession of this property for two years before the deed was made, and continued so to do for nearly two years longer, (March 14, 1826, to December 18, 1827,) and in all that time, so far as appears, behaved with entire propriety. It was only after her father-in-law's death that the property commenced to go. So Mrs. Hume testifies. Rec., p. 22.

Moreover, there was on the spot at least one uncle of

the Berry children, John E. Berry, residing on the adjoining plantation, where he had daily opportunities of seeing what was passing. (Beale's answer to John E. Berry's bill, record, page 14, fol. 48.) It must be presumed that as this gentleman felt sufficient interest in his nieces to file a bill to protect their rights, he was reasonably diligent in doing so. Yet Mr. Beale, who resided 20 miles distant, had anticipated him in the proceeding.

When this court considers all the circumstances, the manner in which Mrs. Berry's own property was necessarily mixed up with the trust property; the extensive rights she had over the latter, and the inherent difficulty of knowing whether she was exceeding her rights; the very express directions in the deed, that she was not to be molested or hindered in enjoyment of the property; her unexceptionable conduct with regard to the property during the four years she had held it before the grantor's death; and the absence of any reason to suspect that that event would make any change in her conduct; the great confidence reposed in her by the grantor, her father-in-law, who left the whole, sole, and exclusive use and enjoyment of the property to her, without making the slighest provision or giving any rights whatever to his own grandchildren, her daughters, until her death or marriage; and the further fact that these children had near relatives on the spot to watch over them; it is not at all surprising, on the contrary, it was very natural that Mr. Beale should be taken entirely unawares by the total change which took place in Mrs. Berry's conduct, and the rapidity with which she disposed of the property, so soon as the restraint of the father-in-law's presence was removed.

If we may resort to conjecture on an immaterial point, when positive evidence fails, it is not unreasonable to suppose that the entire change in Mrs. Berry's conduct was wrought by the prospect and desire of contracting another marriage with Mr. Owings, and as that involved the for-

feiture of the property, she formed the deliberate determination on that occasion to convert all the personal property she could to her own use.

The testimony exhibits a marked instance of how a fabricated tale fails to hang together. To make out that Mr. Beale shared the proceeds of the trust property, evidence is offered that he got rich immediately. Witnesses are examined expressly to prove that Mr. Beale became suddenly rich when the trust property was sold, and are directly questioned on that point. Of course the two old colored servants, faithful to those who were once their "young mistresses," answer as desired. "Mr. Beale became *very* rich, and rich very fast, so much so that I wondered how he got so." Johnson, record, (p. 20, fol. 67.) "After he got the property into his own hands he was like the green bay tree by the river of water. He spreaded out; he got everything he wanted." Brooks, (rec., p. 26, fol. 88.)

But it was also necessary to show why the ladies or their husbands did not sue Mr. Beale, and the reason is thus given by Mrs. Hume: "My husband thought Mr. Beale done very wrong. He was himself a lawyer. Mr. Hume spoke in his lifetime of bringing a suit, and asked me to join him. I told him it was no use, *Mr. Beale was poor and we could make nothing out of him at that time. This was in* 1834 *or* 1835," four years after the property was sold. Rec. p. 23, fol. 79. * * "Mr. Hume used to lend Mr. Beale money and supersede his debts for him. "P. 24, fol 81.

Thus it is proved that Mr. Beale was so rich that he must have shared the plunder, and at the same time so poor that it was useless to attempt to make him disgorge. And these are not accidental discrepancies, but both facts are attempted to be proved to sustain different parts of the case.

IV.

*Mr. Beale never made to the complainants any admissions, promises or excuses.*

There is not a particle of evidence, even including Mrs. Hume's testimony as to conversations with the deceased, that Mr. Beale ever admitted any indebtedness or promised to account to the complainant. Being asked whether she had called on Mr. Beale to settle up his trusteeship under the deed, she answers, "I called on him repeatedly. I told him my situation and told him it was very destitute. He did not give me any money, and he never made any settlement. He made a great many promises, and that is all. * * * The reason I never instituted this suit before was, he made so many promises from time to time that he would settle." (Rec., p. 22, fol. 76). This is the extent of her testimony, and there is not a word of acknowledgement that anything was due. But these conversations, she says, were never in the presence of third parties. (Rec., p.23, fol. 78.) She never wrote to him nor did he ever write to her on the subject. (Id., fol. 80.) Whatever was said, is to be learned solely from Mrs. Hume's own account of her conversations with the deceased, which was objected to at the time as incompetent, and is clearly so, as the act of Congress which permits interested parties to testify, excludes, in an action against the executor of a deceased person, the testimony of such party as to any conversation or transactions with the decedent. (Act of March 3, 1865, chap. 113, 13 Stats. at Large, 533.) If this rule were relaxed, there would be no safety whatever for dead men's estates.

A few letters from Mrs. Hume to Mr. Beale have been found among his papers, and were shown to the witness Some which she acknowledges are put in evidence, and show clearly that Mr. Beale was a true and kind friend, though sometimes annoyed at her conduct. The tone of them is utterly incompatible with the existence of any such

baseness as Mrs. Hume says she always attributed to Mr. Beale, and now charges upon him. See addition to record. p.

Mrs. Crosby did not testify.

An attempt is made to pervert the tenor of conversations between Mr. Beale and Mr. Douglass as testified to by the latter, into an admission of his indebtedness to the complainants.

This witness testifies, that he was endorser on some notes held by Mr. Beale which were over due, and that Mr. Beale accompanied by Mrs. Hume, repeatedly called on the witness, at his house, for payment, saying that he owed the complainants money and desired to pay it. That these conversations occurred more than fifty times. Rec., p. 18.

Now did these statements of Mr. Beale refer to the obligations arising from his breach of trust? We say it did not, but referred to money of Miss Rusia Rosalie Berry, $3,000, which she had received from the sale of the farm, in 1836, and which she placed in Mr. Beale's hands, and which, after her death, Mrs. Beale paid to her administratrix, Mrs. Hume.

Mrs. Hume testifies that each of the three sisters received about $3,000 from the sale of the farm. Her own share was paid directly to her husband. But she says: "My sister that died was named Rusia Rosalie Berry. She died on the 24th of May, 1860. Mr. Beale paid me $3,000 from the farm that was sold, of my sister's portion. * * This $3,000 was a payment to me and my sister, Mrs. Crosby. This was all I ever received from Mr. Beale on account of my sister, $1,500 a piece. * * * I was the administratrix of Miss Lucia Berry, otherwise Rusia Rosalie. She died 24th of May, 1860. I collected altogether about $3,000 on account of my sister's estate from Mr. Beale. This is the same $3,000 that I spoke of in my examination-in-chief, and divided between Mrs. Crosby and myself. * * * He paid me from time to time in driblets. He

did not finish paying that till just before his death." Rec., pp. 22, 23, 24.

Now, consider Douglas' testimony:

1. He says that Mr. Beale, in speaking of the debt, mentioned the name of Berry and *no other*. The only sister named Berry was Miss Rusia. If Mr. Beale was speaking of what he owed Mrs. Hume and Crosby, in their own right, he would have used their names, and not have used the name of Berry, which they had laid aside years before, and he would have had no occasion to speak of owing any Berry at all.

2. Mr. Beale "said he had charge of their money, and borrowed it." That was the way in which he owed Miss Rusia, and that certainly was not the way in which he owed the complainants. If he owed them, it was because he had fraudulently sold their slaves, and not because he had borrowed their money.

3. Mrs. Hume went several times with Mr. Beale when he called on Douglas to get money for her, and she was Miss Rusia's administratrix. Though she was present, her name was not mentioned. Rec., pp. 18, 21.

4. Mrs. Hume testifies that Mr. Beale never talked before third persons, about the wasted property, unless they were interested, and in effect that he was cautious not to commit himself in the presence of witnesses. Yet it is said he had no hesitation in telling Mr. Douglas "fifty times" and "frequently" in her presence, that he owed her and her sister money. What money was he speaking of? The money he did owe and afterwards paid to them, from their sister, Miss Berry's estate, or the money which he had denied 30 years before, and had never admitted since that he owed it at all.

5. Again, if Mr. Beale went so far as to take Mrs. Hume to Mr. Douglas to get money for her in settlement of the present demand, is it possible that she suffered the whole matter to drop when Mr. Douglas paid up in 1863, and this without getting a cent of the money he paid?

6. And if Mr. Beale, in 1863, so openly expresssed his anxiety to pay this demand, is it not extraordinary we hear no more of such professions during the remaining three years of his life?

Now, when we consider all these circumstances and that the money Mr. Beale sought to repay was *borrowed money*, that it was due to some one named *Berry*, that Mr. Beale did owe Miss Rusia Berry borrowed money, that Mrs. Hume was Miss Berry's administratrix, and that she went with Mr. Beale to Mr. Douglas to get the money, and she and Mrs. Crosby were to divide, being the nearest of kin, there can be no question that Mr. Beale was speaking to Mr. Douglas of the borrowed money he owed Miss Berry, whose name he mentioned, and was not speaking of any money he owed Mrs. Hume and Mrs. Crosby, whose name he did not mention, and which was not borrowed or otherwise obtained from them, but was due them, if at all, as damages for breach of trust.

*Special Defences.*

The answer pleads the several statutes of limitations, and the rule in equity is that if the complainant had a concurrent remedy at law, and the remedy at law be barred, the remedy in equity will be absolutely barred also. (Humbert *vs.* The Rector, &c., 7 Paige, 195, 197.) "The statutes of limitations when they are addressed to courts of equity as well as courts of law, as they seem to be in cases of concurrent jurisdiction (as for example in matters of account) to which they directly apply, seem equally obligatory in each court. It has been very justly observed that in such cases courts of equity do not act so much in analogy to the statutes as in obedience to them." (Story Eq. Jur., sec. 1520.)

In this case the suit is founded on an alleged abuse of a trust no longer continuing, and seeks an account of such trust. It does not seek to compel the trustee to execute

an existing trust, but to have a past trust settled, and the proceeds ascertained and paid over by a defaulting trustee It is, in substance, for breach of trust, and for such a breach of trust an action at law may be maintained, or perhaps an action of covenant, as by the trust deed was executed by Mr. Beale, and such an action would be still barred in 12 years. Mrs. Hume was of age in 1839, (born in 1818,) and has been *sui juris* since her husband's death in 1842 —25 years before the suit was brought.

Mrs. Crosby was not married till 1844; the limitation as to her began to run when she attained full age, which must have been before that year.

But in equity as at law, the disability, if relied on, must be shown by the party seekiug to avoid the statute.

In Maryland, and in this District, women at 18 years of age are entitled to receive from guardians and trustees their personal property.

Again, the trust terminated in 1836. Mrs. Hume testifies that the real estate was sold by commissioners appointed by the court. "Mr. Brooks and Mr. Magruder paid my husband in person my portion. * * My husband received my share of the sale of the farm in 1836. * * " Rec., p. 23.

The bill avers that the personal property was all sold and the proceeds converted to the use of R. Beale, and that complainants are "entitled to the entire proceeds." (Rec., p. 2, fol. 5.) These proceeds were realized in or before 1830 There is no allegation that any of the property remains in specie, nor any prayer for the conveyance thereof, but only for settlement or account.

"At law so far as any remedy exists the debt (created by breach of trust,) is treated as a simple contract debt. * * * The rule in courts of equity is the same.

The debt created by a breach of "trust is there considered but as a simple contract debt, even though circumstances of fraud appear, unless, indeed, there be some *acknowledgment*

of the debt by a trustee under seal." Story Eq. Jur., 1285, 1286.

"It is well established that the statute of limitations is a good plea in equity as well as at law." &c.

Kane *vs.* Bloodgood, 7 J. C. R., 241, 250, 251.

The statute is a bar in equity as well as in law except as to continuing trusts. Story's Eq, Jur., sec. 1520 *a*.

But it is said that statutes of limitation do not apply in cases of express trust. The rule is that only *existing* expresst rusts are not within the statute, but all othersare.

Story, Equity Jurisprudence, § 1520, says:

"It is often suggested that lapse of time, constitutes no bar in cases of trust, but this proposition must be received with its appropriate qualifications. As long as the relation of trustee and *cestui que trust* is acknowledged to exist between the parties and the trust is continued, lapse of time can constitute no bar to an account or other proper relief for the *cestui que trust*. But where this relation is no longer admitted to exist, or time and long acquiescence have obscured the nature and character of the trust, or the acts of the parties or other circumstances give rise to presumptions unfavorable to its continuance; in all such cases a court of equity will refuse relief upon the ground of lapse of time, and its inability to do complete justice. This doctrine will apply even to cases of express trust, and *a fortiori* it will apply with increased strength to cases of implied or constructive trusts."

The ground on which express trusts are not within the statutes, is that the possession of the trustee is according to his title (Bright *vs.* Legerton, 2 De G., F. & J. 606,) a reason which does not apply to cases of breach of trust.

But first here is no existing trust. The trust was made to end by its own terms on any one of several contingencies.

If Mrs. Berry married Owings in 1830, then when Mrs. Hume was married in 1833 the trust ended.

If Mrs. Berry was not married till 1843, then Mrs. Hume having been married and having attained full age, the trust terminated.

But, in fact, the trust terminated on the sale of the real estate in 1834 or 1836. And the trust, as to the personality, must be held to have terminated when the property was converted or wasted in 1830.

The conversion was known to the complainants in 1830, and averred in their bill. It was again made known to them in Mr. Beale's answer to that bill.

The issue of fact was then distinctly made and presented. The existence of any further trust as to the personal property was openly disavowed by the trustee, the position of the parties became adverse, and limitation then began to run.

Boone *vs.* Chiles, 10 Pet., 177.

Whenever there was an actual conversion of the property by the trustee, the statute would have commenced to run.

*Lapse of Time.*

*Lapse of time is a defence in equity.*

Story Eq. Jur., sec. 1284 *a*, referring to the rule imposing diligence upon parties seeking relief, says: "Hence, if there be a clear breach of trust by a trustee, yet if the *cestui que trust*, or beneficiary has for a long time acquiesced in the misconduct of the trustee with full knowledge of it, a court of equity will not relieve him but leave him to bear the fruits of his own negligence or infirmity of purpose." Citing Broadhurst *vs.* Balguay, 1 Y. & C., N. R. 16, 28 to 32. In Knight *vs.* Taylor, 1 How., 161, 168, this court, after noticing the long delay in bringing suit, as raising a presumption of payment, said, "but we do not found our judgment upon the presumption of payment. For it is not merely on the presumption of

payment, or in analogy to the statute of limitations, that a court of chancery refuses to lend its aid to stale demands. There must be conscience, good faith and reasonable diligence, to call into action the powers of the court." In matters of account where they are not barred by the act of limitations, courts of equity refuse to interfere after a considerable lapse of time from considerations of public policy, and from the difficulty of doing entire justice when the original transactions have become obscure by time, and the evidence may be lost.

"The rule upon this subject must be considered as settled by the decision of this court in the case of Piatt *vs.* Vattier, 9 Peters, 416; and that nothing can call a court of chancery into activity but conscience, good faith, and reasonable diligence; and where these are wanting, the court is passive and does nothing; and therefore, from the beginning of equity jurisdiction, there was always a limitation of suit in that court."

In Piatt *vs.* Vattier, just cited, this court said: "We are of opinion that lapse of time is, upon principles of equity, a clear bar to the present suit independently of the statute. * * The established doctrine—or as Lord Redesdale phrased it in Hovenden *vs.* Annesley, 'the law of courts of equity from its being a rule adopted by those courts, independent of any positive limitations, is that it will not entertain stale demands." And among the cases cited to show that the doctrine is held by the American courts, is that of Prevost *vs.* Gratz, 6 Wheaton, 481, in which the language is so exactly applicable to the circumstances of this case, that we here extract it:

"Fraud or breach of trust ought not lightly to be imputed to the living, for the legal presumption is the other way, and as to the dead, who are not here to answer for themselves, it would be the height of injustice and cruelty to disturb their ashes, and violate the sanctity of the grave,

unless the evidence of fraud be clear beyond a reasonable doubt." Prevost *vs.* Gratz, 6 Wheat., 481, 498.

What are the excuses alleged for the delay?

1. False and fraudulent promises made by the deceased with intent to procrastinate and delay the complainants.

The bill alleging this is not sworn to, and the only testimony, and that clearly inadmissible, is that of Mrs. Hume herself, whose testimony is very vague, by no means sustaining the allegations of the bill, but, in fact, consistent with the perfect innocence of Mr. Beale, and the absence of any indebtedness by him. Beyond this incompetent and inadmissible testimony, there is not a particle of evidence tending or introduced to prove these allegations.

2. That Mr. Beale took advantage of his relationship (having married their half sister) to abuse the confidence which it naturally tended to inspire.

On this point not a particle of evidence is offered. Mr. Beale's wife had no interest whatever in the Berry property, and we deny that the relationship tended to inspire any confidence which Mr. Beale's character did not of itself deserve.

The above are the excuses, and the only excuses, set up in the bill for the long delay of thirty-seven years in bringing this suit.

And to the contrary of these excuses, and in direct contradiction of them, is the testimony of Mrs. Hume, that her husband contemplated a suit against Mr. Beale, but was prevented from bringing it, not by his promises, but by her representations of Mr. Beale's poverty.

*Former Adjudication.*

The bill filed in 1830 by the present complainants was for identically the same cause of action as that comprised in the present bill. It sets forth the deed of trust of March 14, 1826, the sale of the negroes and other personal property by Beale and Mrs. Berry, and the waste of the proceeds,

and prays the only means of relief that can now be granted, an account, &c. Rec. p. 10.

This bill was duly answered, the cause was regularly heard, and a decree made dismissing the bill with costs.

There is nothing to affect the validity and effect of this decree. Though made against infants "an infant is as much bound by a decree as a person of full age." Story Eq. p. 792

*Conclusion.*

We submit—

1. The bill for account will not lie upon the deed alone.
2. No breach of trust is proved.
3. The suit is barred by limitation.
4. It is barred by lapse of time.
5. It is barred by the former adjudication.
6. The long lapse of time since the claim accrued, the manner in which it was presented, met and refuted forty years ago, in another jurisdiction, and on the spot where the transactions occurred while they were yet fresh in the memory of all, and in the midst of complainants' near kindred, and the long acquiescence of the complainants in the result of that suit considered with all the other facts, entirely discredited the case attempted to be made in the court below.
7. Even if the court below had been disposed to make a decree for an account, the complainants' evidence afforded no materials for a decree. Certainly the defendants could not be required to account for *all* the property described in the deed of trust, the cattle, horses, sheep, hogs, farm implements, as well as the negroes, and what part of them she should account for, the complainants entirely fail to show. If, as is certain, the deceased was not accountable for *all* these, it lay on the complainants to show *what part* he was accountable for, and this they have not attempted to show, but have directed their evidence to charge him with the whole.

J. M. CARLISLE,
J. D. McPHERSON,
*for Appellees.*

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